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Authority: 20 U.S.C. 1087aa-1087ii and 20 U.S.C. 421-429, unless otherwise noted.

Subpart A--General Provisions

Sec. 674.1 Purpose and identification of common provisions.

(a) The Federal Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs.

(b)(1) The Federal Perkins Loan Program, authorized by Title IV-E of the Higher Education Act of 1965, as amended, and previously named the National Direct Student Loan Program, is a continuation of the National Defense Loan Program authorized by Title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under Title II before the enactment of Title IV-E continue to exist.

(2) The Secretary considers any student loan fund established under Title IV-E to include the assets of an institution's student loan fund established under Title II.

*(c) Provisions in these regulations that are common of all campus-based programs are identified with an asterisk.

(d) Provisions in these regulations that refer to "loans" or "student loans" apply to all loans made under Title IV-E of the HEA or Title II of the National Defense Education Act.

(Authority: 20 U.S.C. 1087aa-1087hh; Pub. L. 92-318, Sec. 137(d)(1))

Note: (b)(1) amended July 21, 1992, effective September 18, 1992.

Sec. 674.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Award year
Defense loan
Direct loan
Enrolled
Federal Family Education Loan (FFEL) Program
Federal Pell Grant Program
Federal Perkins loan
Federal Perkins Loan Program
Federal PLUS Program
Federal SLS Program
Federal Supplemental Educational Opportunity Grant (FSEOG) Program
Federal Work-Study (FWS) Program
Full-time student
HEA
National Defense Student Loan Program
National Direct Student Loan (NDSL) Program
Payment period
Secretary

(b) The Secretary defines other terms used in this part as follows:

Default: The failure of a borrower to make an installment payment when due or to comply with other terms of the promissory note or written repayment agreement.

Enter repayment: The day following the expiration of the initial grace period or the day the borrower waives the initial grace period. This date does not change if a forbearance,

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deferment, or cancellation is granted after the borrower enters repayment.

**Expected family contribution (EFC):* The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

Federal capital contribution (FCC): Federal funds allocated or reallocated to an institution for deposit into the institution's Fund under section 462 of the HEA.

**Financial need:* The difference between a student's cost of attendance and his or her EFC.

Fund (Federal Perkins Loan Fund): A fund established and maintained according to Sec. 674.8.

Graduate or professional student: A student who--

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic workload as determined by the institution according to its own standards and practices.

Half-time undergraduate student: An enrolled undergraduate student who is carrying a half-time academic workload, as determined by the institution, which amounts to at least half the workload of a full-time student. However, the institution's half-time standards must equal or exceed the equivalent of one or more of the following minimum requirements:

(1) 6 semester hours or 6 quarter hours per academic term for an institution using a standard semester, trimester, or quarter system.

(2) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system; or the prorated equivalent for a program of less than one year.

(3) 12 clock hours per week for an institution using clock hours.

(4) 12 hours of preparation per week for a student enrolled in a program of study by correspondence. Regardless of the workload, no student enrolled solely in correspondence study is considered more than half-time.

Initial grace period: That period which immediately follows a period of enrollment and immediately precedes the date of the first required repayment on a loan. This period is generally nine months for Federal Perkins loans, Defense loans, and Direct loans made before October 1, 1980, and six months for other Direct loans.

**Institution of higher education (institution):* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

Institutional capital contribution (ICC): Institutional funds contributed to establish or maintain a Fund.

Making of a loan: When the borrower signs the promissory note for the award year and the institution makes the first disbursement of loan funds under that promissory note for that award year.

National credit bureau: Any one of the national credit bureaus with which the Secretary has an agreement.

**Need-based employment:* Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

Post-deferment grace period: That period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Student loan: For this part means a Direct Loan, Defense Loan, or a Federal Perkins Loan.

Total monthly gross income: The gross amount of income received by the borrower from employment (either full-time or part-time) and from other sources.

Undergraduate student: A student enrolled at an institution of higher education who is in an undergraduate course of study which usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

(Authority: 20 U.S.C. 1087aa-1087hh)

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Note: (b) amended July 21, 1992, effective September 18, 1992, and November 30, 1994, effective July 1, 1995. "Full-time student" added to (a); "Full-time graduate or professional student", "Full-time undergraduate student", and "Satisfactory arrangements to repay the loan" removed from and "making of a loan" amended in (b) December 1, 1995, effective July 1, 1996. "Payment period" added to (a); (a) introductory clause amended; and "Payment period" removed from (b) November 29, 1996, effective July 1, 1997.

Sec. 674.3 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Sec. 674.4 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Sec. 674.5 Federal Perkins Loan program cohort default rate and penalties.

(a) *Default penalty.* If an institution's cohort default rate meets the following levels, a default penalty is imposed on the institution as follows:

(1) If the institution's cohort default rate equals or exceeds 15 percent, the institution must establish a default reduction plan in accordance with 674.6.

(2) If the institution's cohort default rate equals or exceeds 20 percent, but is less than 25 percent, the institution's FCC is reduced by 10 percent.

(3) If the institution's cohort default rate equals or exceeds 25 percent, but is less than 30 percent, the institution's FCC is reduced by 30 percent.

(4) If the institution's cohort default rate equals or exceeds 30 percent, the institution's FCC is reduced to zero.

(b) *Cohort default rate.* (1) The term "cohort default rate" means, for any award year in which 30 or more current and former students at the institution enter repayment on a loan received for attendance at the institution, the percentage of those current and former students who enter repayment in that award year on the loans received for attendance at that institution who default before the end of the following award year.

(2) In determining the number of students who default before the end of the following award year, the

Secretary excludes any loans that, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate.

(3) For any award year in which less than 30 current and former students at the institution enter repayment on a loan received for attendance at the institution, the "cohort default rate" means the percentage of those current and former students who entered repayment on loans received for attendance at that institution in any of the three most recent award years and who defaulted on those loans before the end of the award year immediately following the year in which they entered repayment.

(c) *Defaulted loans to be included in the cohort default rate.* For purposes of calculating the cohort default rate under paragraph (b) of this section--

(1) A borrower must be included only if the borrower's default has persisted for at least--

(i) 240 consecutive days for loans repayable in monthly installments; or

(ii) 270 consecutive days for loans repayable in quarterly installments;

(2) A loan is considered to be in default if a payment is made by the institution of higher education, its owner, agency, contractor, employee, or any other entity or individual affiliated with the institution, in order to avoid default by the borrower;

(3)(i) Any loan that is in default, but on which the borrower has made satisfactory arrangements to repay the loan, or any loan that has been rehabilitated before the end of the following award year is not considered to be in default for purposes of the cohort default rate calculation; and

(ii) In the case of a student who has attended and borrowed at more than one institution, the student and his or her subsequent repayment or default are attributed to the institution for attendance at which the student received the loan that entered repayment in the award year; and

(4) Improper servicing or collection means the failure of the institution to comply with subpart C of this part.

(d) *Locations of the institution.* (1) A cohort default rate of an institution applies to all locations of the institution as it exists on the first day of the award year for which the rate is calculated.

(2) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

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(3) For an institution that changes status from a location of one institution to a free-standing institution, the Secretary determines the cohort default rate based on the institution's status as of July 1 of the award year for which a cohort default rate is being calculated.

(4)(i) For an institution that changes status from a free-standing institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both the former free-standing institution and the other institution. This cohort default rate applies to the new consolidated institution and all of its current locations.

(ii) For free-standing institutions that merge, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both of the institutions that are merging. This cohort default rate applies to the new, consolidated institution.

(iii) For an institution that changes status from a location of one institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the number of students who default during the applicable award years from both of the institutions in their entirety, not limited solely to the respective locations.

(5) For an institution that has a change in ownership that results in a change in control, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from the institution under both the old and new control.

(e) *Satisfactory arrangements to repay the loan.* The Secretary considers that the borrower has made satisfactory arrangements to repay the loan when the borrower has--

(1) Paid the loan in full; or

(2) Executed a new written repayment agreement; and

(3) Made one payment each month for six consecutive months.

(f) *Loan rehabilitation.* (1) The Secretary considers that the borrower has rehabilitated the loan when the borrower has--

(i) Paid the loan in full; or

(ii) Executed a new written repayment agreement; and

(iii) Made one payment each month for 12 consecutive months.

(2) Within 30 days of the date of the rehabilitation, the institution shall report the rehabilitation to any national credit bureau.

(Authority: 20 U.S.C. 1087bb)

Note: Section added November 30, 1994, effective July 1, 1995. (e) redesignated as (f); new (e) added; and redesignated (f) amended December 1, 1995, effective July 1, 1996.

674.6 Default reduction plan.

(a) *General.* An institution with a cohort default rate that equals or exceeds 15 percent shall establish and implement a plan designed to reduce defaults by its students in the future. The institution shall submit to the Secretary by December 31 of the calendar year in which the cohort default rate was calculated--

(1) A written description of the default reduction plan or

(2) A statement indicating that the institution agrees to comply with the required measures in paragraph (b) of this section.

(b) *Required measures.* The default reduction plan required under this section must include a description of the measures to be taken by the institution to reduce defaults. The institution shall explain how it plans to implement the following measures:

(1) Revise admission policies and screening practices, consistent with applicable State law, to ensure that students enrolled in the institution, especially those who are not high school graduates or those who are in need of substantial remedial work, have a reasonable expectation of succeeding in their programs of study.

(2) Improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, including--

(i) Providing academic counseling and other support services to students on a regular basis, at a time and location that is convenient for the students involved;

(ii) Publicizing the availability of the academic counseling and other support services;

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(iii) Establishing procedures to identify academically high-risk students and schedule those students for immediate counseling services; and

(iv) Maintaining records identifying those students who receive academic counseling.

(3) Attempt to reduce its withdrawal rate by conforming with that accrediting agency's standards of satisfactory progress and with those described in 34 CFR 668.14, and improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program in consultation with its academic accrediting agency.

(4) Increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution. Reviews must be conducted each month.

(5) Expand its job placement program for its students by--

(i)(A) Increasing contacts with local employers, counseling students in job search skills, and

(B) Exploring with local employers the feasibility of establishing internship and cooperative education programs;

(ii) Attempting to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program in consultation with the cognizant accrediting body; and

(iii) Establishing a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

(6) Remind the borrower of the importance of the repayment obligation and of the consequences of default and update the institution's records regarding the borrower's employer and employer's address as part of the contacts with the borrower under 674.42(b).

(7) Obtain from the borrower at the time of a borrower's admission to the institution information regarding references and family members beyond those provided on the loan application to provide the institution or its agent with a variety of ways to locate a borrower who later relocates without notifying the institution.

(8) Explain to a prospective student that the student's dissatisfaction with, or nonreceipt of, the educational services

being offered by the institution does not excuse the borrower from repayment of any Federal Perkins Loan.

(9) Use a written test and intensive additional counseling for those borrowers who fail the test to ensure the borrower's comprehension of the terms and conditions of the loan including those described in 674.16 and 674.42(a) as part of the initial loan counseling and the exit interview.

(10) During the exit interview provided to a Federal Perkins Loan borrower--

(i) Explain the use by institutions of outside contractors to service and collect loans;

(ii) Provide general information on budgeting of living expenses and other aspects of personal financial management; and

(iii) Provide guidance on the preparation of correspondence to the borrower's institution or agent and completion of deferment and cancellation forms.

(11) Use available audio-visual materials such as videos and films to enhance the effectiveness of the initial and exit counseling.

(12) Conduct an annual comprehensive self-evaluation of its administration of the title IV programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications.

(13) Delay loan disbursements to first-time borrowers for 30 days after enrollment.

(14) Require first-time borrowers to endorse their loan check at the institution and to pick up at the institution any loan proceeds remaining after deduction of institutional charges.

(Authority: 20 U.S.C. 1087bb)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: Section added November 30, 1994, effective July 1, 1995. (a)(3) removed September 26, 1997, effective October 27, 1997.

674.7 Expanded lending option (ELO).

(a) To participate in the expanded lending option in any award year, an eligible institution shall enter into a special ELO participation agreement with the Secretary. The agreement provides that the institution shall--

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(1) Deposit ICC equal to 100 percent of the FCC described in 674.8(a)(1) for that award year into the Fund;

(2) Maintain a cohort default rate that is equal to or less than 15 percent; and

(3) Have participated in the Federal Perkins Loan program for at least two years.

(b) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that participates in the ELO may borrow in any academic year is--

(1) \$4,000 for a student who has not successfully completed a program of undergraduate education; and

(2) \$6,000 for a graduate or professional student.

(c) The aggregate maximum amount of Federal Perkins and Direct Loans an eligible student who attends an institution that participates in the ELO may borrow is--

(1) \$8,000 for a student who has not successfully completed two years of a program leading to a bachelor's degree;

(2) \$20,000 for a student who has successfully completed two years of a program leading to a bachelor's degree but who has not received the degree; and

(3) \$40,000 for a graduate or professional student.

(d) The maximum annual amounts described in paragraph (b) of this section and the aggregate maximum amounts described in paragraph (c) of this section may be exceeded by 20 percent if the student is engaged in a program of study abroad that is approved for credit by the home institution at which the student is enrolled and that has reasonable costs in excess of the home institution's cost of attendance.

(e) For each student, the maximum annual amounts described in paragraphs (b) and (d) of this section and the aggregate maximum amounts listed in paragraphs (c) and (d) of this section include any amount borrowed previously by that student under title IV, part E of the HEA at any institution, including any amounts that may have been repaid to the Fund at any institution.

(f) The institution shall deposit into its Fund an amount required under paragraph (a)(1) of this section whether or not the institution makes loans in the amount authorized under paragraphs (b) and (c) of this section.

(Authority: 20 U.S.C. 1087cc, 1087dd)

Note: Section added November 30, 1994, effective July 1, 1995.

Sec. 674.8 Program participation agreement.

To participate in the Federal Perkins Loan program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR Part 668. The agreement further specifically provides, among other things, that--

(a) The institution shall establish and maintain a Fund and shall deposit into the Fund--

(1) FCC received under this subpart;

(2) Except as provided in paragraph (a)(1) of 674.7--

(i) ICC equal to at least three-seventeenths of the FCC described in paragraph (a)(1) of this section in award year 1993-94; and

(ii) ICC equal to at least one-third of the FCC described in paragraph (a)(1) of this section in award year 1994-95 and succeeding award years;

(3) ICC equal to the amount of FCC described in paragraph (a)(1) of 674.7 for an institution that has been granted permission by the Secretary to participate in the ELO under the Federal Perkins Loan program;

(4) Payments of principal, interest, late charges, penalty charges, and collection costs on loans from the Fund;

(5) Payments to the institution as the result of loan cancellations under section 465(b) of the Act;

(6) Any other earnings on assets of the Fund, including the interest earnings of the funds listed in paragraphs (a)(1) through (4) of this section net of bank charges incurred with regard to Fund assets deposited in interest-bearing accounts; and

(7) Proceeds of short-term no-interest loans made to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for--

(1) Making loans to students;

(2) Administrative expenses as provided for in 34 CFR 673.7;

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(3) Capital distributions provided for in section 466 of the Act;

(4) Litigation costs (see Sec. 674.47);

(5) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and late charges on a loan made from the Fund (see Sec. 674.47); and

(6) Repayment of any short-term, no-interest loans made to the Fund by the institution in anticipation of collections or receipt of FCC.

(c) The institution shall submit an annual report to the Secretary containing information that determines its cohort default rate that includes--

(1) For institutions in which 30 or more of its current or former students first entered repayment in an award year--

(i) The total number of borrowers who first entered repayment in the award year; and

(ii) The number of those borrowers in default by the end of the following award year; or

(2) For institutions in which less than 30 of its current or former students entered repayment in an award year--

(i) The total number of borrowers who first entered repayment in any of the three most recent award years; and

(ii) The number of those borrowers in default before the end of the award year immediately following the year in which they entered repayment.

(d)(1) If an institution determines not to service or collect a loan, the institution may assign its rights to the loan to the United States without recompense at the beginning of a repayment period; or

(2) If a loan is in default despite due diligence on the part of the institution in collecting the loan, the institution may assign its rights to the loan to the United States without recompense.

(e) To assist institutions in collecting outstanding loans, the Secretary provides to an institution the names and addresses of borrowers or other information relevant to collection which is available to the Secretary.

(f) The institution shall provide the loan information required by section 463A of the HEA to a borrower.

(Authority: 20 U.S.C. 1087cc, 1087cc-1, 1094)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (a) introductory text and (a)(4) amended July 21, 1992, effective September 18, 1992. (a)(2), (a)(3), and (c) amended November 30, 1994, effective July 1, 1995.

Sec. 674.9 Student eligibility.

A student at an institution of higher education is eligible to receive a loan under the Federal Perkins Loan program for an award year if the student--

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.32;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate, or professional student at the institution, whether or not engaged in a program of study abroad approved for credit by the home institution;

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order--

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members;

(d) Has received for that award year, if an undergraduate student--

(1) A SAR as a result of applying for a grant under the Federal Pell Grant Program; or

(2) A preliminary determination of eligibility or ineligibility for a Federal Pell Grant by the institution's financial aid administrator after applying for a SAR with a Federal Pell Grant Processor;

(e) Is willing to repay the loan. Failure to meet payment obligations on a previous loan is evidence that the student is unwilling to repay the loan;

(f) Provides to the institution a driver's license number, if any, at the time of application for the loan;

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(g) Reaffirms any Federal Perkins, Direct, or Defense loan amount that previously was written off (if the amount of the write-off exceeded \$25); and

(h)(1) In the case of a borrower whose previous loan was canceled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(2) Signs a statement acknowledging that any new Federal Perkins or Direct loan the borrower received cannot be canceled in the future on the basis of any present impairment, unless that condition substantially deteriorates.

(i) For purposes of this section, reaffirmation means the acknowledgment of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower--

(1) Signing a new promissory note or new repayment agreement; or

(2) Making a payment on the loan.

(Authority: 20 U.S.C. 1087aa, 1087dd, and 1091)

Note: (b) amended and (f), (g), (h), and (i) added November 30, 1994, effective July 1, 1995. (a) revised September 26, 1997, effective October 27, 1997.

Sec. 674.10 Selection of students for loans.

(a)(1) An institution shall make loans under this part reasonably available, to the extent of available funds, to all students eligible under Sec. 674.9 but shall give priority to those students with exceptional financial need.

(2) The institution shall define exceptional financial need for the purpose of the priority described in paragraph (a)(1) of this section and shall develop procedures for implementing that priority.

(b) If an institution's allocation of FCC is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, and if the total financial need of those students exceeds 5 percent of the total financial need of all students at the institution, the institution shall offer to those students at least 5 percent of the dollar amount of those loans made under this part.

(c) The institution shall establish selection procedures and these procedures must be--

(1) In writing;

(2) Uniformly applied; and

(3) Maintained in the institution's files.

(Authority: 20 U.S.C. 1087cc and 1087dd)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (b) amended November 30, 1994, effective July 1, 1995.

Sec. 674.11 [Reserved]

Sec. 674.12 Loan maximums.

(a) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that does not participate in the ELO may borrow in any academic year is--

(1) \$3,000 for a student who has not successfully completed a program of undergraduate education; and

(2) \$5,000 for a graduate or professional student.

(b) The aggregate maximum amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that does not participate in the ELO may borrow is--

(1) \$15,000 for a student who has not successfully completed a program of undergraduate education; and

(2) \$30,000 for a graduate or professional student.

(c) The maximum annual amounts described in paragraph (a) of this section and the aggregate maximum amounts described in paragraph (b) of this section may be exceeded by 20 percent if the student is engaged in a program of study abroad that is approved for credit by the home institution at which the student is enrolled and that has reasonable costs in excess of the home institution's cost of attendance.

(d) For each student, the maximum annual amounts described in paragraphs (a) and (c) of this section and the aggregate maximum amounts described in paragraphs (b) and (c) of this section, include any amounts borrowed previously by the student under title IV, part E of the HEA at any institution, including any amounts that may have been repaid to the Fund at any institution.

(Authority: 20 U.S.C. 1087dd)

Note: Section amended November 30, 1994, effective July 1, 1995.

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Sec. 674.13 Reimbursement to the Fund.

(a) The Secretary requires an institution to reimburse its Fund in an amount equal to that portion of the outstanding balance of--

(1) A loan disbursed by the institution to a borrower in excess of the amount that the borrower was eligible to receive, as determined on the basis of information the institution had, or should have had, at the time of disbursement; or

(2) Except as provided in paragraph (b) of this section, a defaulted loan with regard to which the institution failed--

(i) To record or retain the loan note in accordance with the requirements of this part;

(ii) To record advances on the loan note in accordance with the requirements of this part; or

(iii) To exercise due diligence in collecting in accordance with the requirements of this part.

(b) The Secretary does not require an institution to reimburse its Fund for the portion of the outstanding balance of a defaulted loan described in paragraph (a)(2) of this section--

(1) That the institution--

(i) Recovers from the borrower or endorser; or

(ii) Demonstrates, to the Secretary's satisfaction, would not have been collected from the borrower even if the institution complied in a timely manner with the due diligence requirements of Subpart C of this part; or

(2) On which the institution obtains a judgment.

(c) An institution that is required to reimburse its Fund under paragraph (a) of this section shall also reimburse the Fund for the amount of the administrative cost allowance claimed by the institution for that portion of the loans to be reimbursed.

(d) An institution that reimburses its Fund under paragraph (a) of this section thereby acquires for its own account all the right, title and interest of the Fund in the loan for which reimbursement has been made.

(Authority: 20 U.S.C. 1087dd-1087hh)

Note: (b)(1)(ii) amended November 30, 1994, effective July 1, 1995.

Sec. 674.14 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Sec. 674.15 [Removed]

Note: Section removed and reserved November 27, 1996, effective July 1, 1997.

Sec. 674.16 Making and disbursing loans.

(a)(1) Before an institution makes its first disbursement to a student, the student shall sign the promissory note and the institution shall provide the student with the following information:

(i) The name of the institution and the address to which communications and payments should be sent.

(ii) The principal amount of the loan and a statement that the institution will report the amount of the loan to a national credit bureau at least annually.

(iii) The stated interest rate on the loan.

(iv) The yearly and cumulative maximum amounts that may be borrowed.

(v) An explanation of when repayment of the loan will begin and when the borrower will be obligated to pay interest that accrues on the loan.

(vi) The minimum and maximum repayment terms which the institution may impose and the minimum monthly repayment required.

(vii) A statement of the total cumulative balance owed by the student to that institution, and an estimate of the monthly payment amount needed to repay that balance.

(viii) Special options the borrowers may have for loan consolidation or other refinancing of the loan.

(ix) The borrower's right to prepay all or part of the loan, at any time, without penalty, and a summary of the circumstances in which repayment of the loan or interest that accrues on the loan may be deferred or canceled including a brief notice of the Department of Defense program for repayment of loans on the basis of specified military service.

(x) A definition of default and the consequences to the borrower, including a statement that the institution may report the default to a national credit bureau.

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(xi) The effect of accepting the loan on the eligibility of the borrower for other forms of student assistance.

(xii) The amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of such charges from the proceeds of the loan or paid separately by the borrower.

(xiii) Any cost that may be assessed on the borrower in the collection of the loan including late charges and collection and litigation costs.

(2) The institution shall provide the information in paragraph (a)(1) of this section to the borrower in writing--

(i) As part of the written application material;

(ii) As part of the promissory note; or

(iii) On a separate written form.

(b)(1) Except as provided in paragraphs (c) and (f) of this section, an institution shall advance in each payment period a portion of a loan awarded for a full academic year.

(2) The institution shall determine the amount advanced each payment period by the following fraction:

$$\frac{\text{Loan amount}}{N}$$

Where Loan Amount = the total loan awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may advance funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

(c) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may advance loan funds to the student for those uneven costs.

(d)(1) The institution shall disburse funds to a student or the student's account in accordance with Sec. 668.164.

(2) The institution shall obtain the borrower's signature on a promissory note for each award year before it disburses any loan funds to the borrower under that note for that award year.

(e) The institution shall advance funds to a student in accordance with the provisions of Sec. 668.164.

(f)(1) The institution shall return to the Fund any amount advanced to a student who, before the first day of classes--

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(g) Only one advance is necessary if the total amount the institution awards a student for an academic year under the Federal Perkins Loan program is less than \$501.

(h) An institutional official may not, without prior approval from the Secretary, obtain a student's power of attorney to endorse any check used to disburse loan funds.

(i) An institution shall report to any one national credit bureau--

(1) The amount of each disbursement;

(2) The date the disbursement was made; and

(3) Information as specified in section 430A of the Act.

(Authority: 20 U.S.C. 1987cc, 1087cc-1, 1087dd, 1091 and 1094)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (a)(1)(ii), (a)(1)(x), and (g) amended and (j) added November 30, 1994, effective July 1, 1995. (d) and (e) amended December 1, 1994, effective July 1, 1995. (d) amended June 30, 1995, effective July 31, 1995. (d) amended December 1, 1995, effective July 1, 1996. (d) (1) and (e) amended; (g) removed; and (h), (i), and (j) redesignated as (g), (h), and (i), respectively, November 29, 1996, effective July 1, 1997.

Sec. 674.17 Federal interest in allocated funds--transfer of Fund.

(a) If an institution responsible for a Federal Perkins Loan fund closes or no longer wants to participate in the program, the Secretary directs the institution to take one or more of the following steps to protect the outstanding loans and the Federal interest in that Fund:

(1) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act.

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(2) The transfer of the outstanding loans to another institution.

(3) The transfer of the outstanding loans to the Department of Education.

(b) An institution that transfers outstanding loans under this paragraph relinquishes its interest in those loans.

(c) If the Secretary directs the transfer of outstanding loans to a second institution, the transferee institution may deposit the collections on those loans in its own Fund. The Secretary considers that portion of the collections on transferred loans corresponding to the transferor institution's ICC to become part of the transferee institution's ICC.

(d) If the Secretary decides to transfer outstanding loans to another institution, and more than one institution offers to collect the outstanding loans, the Secretary directs that the loans be transferred to one or more of the competing institutions on the basis of--

(1) The offering institution's demonstrated loan collection capability; and

(2) The number of students of the transferor institution expected to enroll in the offering institution.

(e) The Secretary does not take an audit exception against a transferee institution on account of actions or omissions of the transferor institution in the administration of its Fund. The transferee institution shall segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the transferor institution's program.

(Authority: 20 U.S.C. 1087cc, 1087ff), and (1087hh)

Note: (a) removed and remaining section redesignated December 1, 1995, effective July 1, 1996.

Sec. 674.18 Use of funds.

(a) *General.* An institution shall deposit the funds it receives under the Federal Perkins Loan program into its Fund. It may use these funds only for making loans and the other activities specified in Sec. 674.8(b).

(b) *Transfer of funds.* (1) An institution may transfer up to 25 percent of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Federal Work-Study program or Federal Supplemental Educational Opportunity Grant program, or to both.

(2) An institution may transfer up to the total of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Work-Colleges program.

(3) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(4) An institution shall report any transferred funds on the Fiscal Operations Report required under 674.19(d).

(5) An institution shall transfer back to the Federal Perkins Loan program any funds unexpended at the end of the award year that it transferred to the FWS program, the FSEOG program, or the Work-Colleges program from the Federal Perkins Loan program.

(Authority: 20 U.S.C. 1087cc, 1087dd, and 1096)

Note: (b)(4) amended July 21, 1992, effective September 18, 1992. (c) added November 30, 1994, effective July 1, 1995. (b) removed and (c) redesignated as (b) November 27, 1996, effective July 1, 1997.

Sec. 674.19 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its Federal Perkins Loan program, an institution shall establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse funds to students.

(2)(i) A separate bank account for Federal funds is not required, except as provided in paragraph (b) of this section.

(ii) An institution shall notify any bank in which it deposits Federal funds of the accounts into which those funds are deposited by--

(A) Ensuring that the name of the account clearly discloses the fact that Federal funds are deposited in the account; or

(B) Notifying the bank, in writing, of the names of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(3)(i) The institution shall ensure that the cash balances of the accounts into which it deposits Federal Perkins Loan Fund cash assets do not fall below the amount of Fund cash assets deposited in those accounts but not yet expended on authorized purposes in accordance with applicable Title IV HEA program requirements, as determined from the records of the institution.

(ii) If the cash balances of the accounts at any time fall below the amount described in paragraph (a)(3)(i) of this section, the institution is deemed to make any subsequent deposits into the accounts of funds derived from other sources

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with the intent to restore to that amount those Fund assets previously withdrawn from those accounts. To the extent that these institutional deposits restore the amount previously withdrawn, they are deemed to be Fund assets.

(b) *Account for Perkins Loan Fund.* An institution shall maintain the funds it receives under this part in accordance with the requirements in Sec. 668.163.

(c) *Deposit of ICC into Fund.* An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

(d) *Records and reporting.* (1) An institution shall establish and maintain program and fiscal records that are reconciled at least monthly.

(2) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(e) *Retention of records--(1) Records.* An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(2) *Loan records.* (i) An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal, interest, collection costs, and either penalty or late charges.

(ii) The history must also show the date, nature, and result of each contact with the borrower in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower, except bills, routine overdue notices, and routine form letters.

(3) *Period of retention of repayment records.* An institution shall retain repayment records, including cancellation and deferment requests, for at least three years from the date on which a loan is assigned to the Department of Education, canceled, or repaid.

(4) *Manner of retention of promissory notes and repayment schedules.* (i) An institution shall keep the original promissory notes and repayment schedules in a locked, fireproof container until--

(A) The loans are satisfied; or

(B) The original documents are needed in order to enforce the loan obligation.

(ii) The institution shall retain certified true copies of documents released for enforcement of the loan.

(iii) After the loan obligation is satisfied, the institution shall return the original notes marked "paid in full" to the borrower.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, Direct, and Federal Perkins Loans.

(v) Only authorized personnel may have access to the loan documents.

(Authority: 20 U.S.C. 1087cc, 1087hh, 1094, and 1232f)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (e)(2)(i) amended July 21, 1992, effective September 18, 1992. (e)(2)(ii) amended November 30, 1994, effective July 1, 1995. (b) amended December 1, 1994, effective July 1, 1995. (e)(4)(v) amended December 1, 1995, effective July 1, 1996. (e)(4)(v) removed; (e)(4)(vi) redesignated as (e)(4)(v); (d), (e)(1), (e)(3), and (e)(4) heading amended November 27, 1996, effective July 1, 1997. (b) revised September 26, 1997, effective October 27, 1997.

Sec. 674.20 Compliance with equal credit opportunity requirements.

(a) In making a loan, an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202).

(b) The Secretary considers the Federal Perkins Loan program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature.

(Authority: 20 U.S.C. 1087aa-1087hh)

(Approved by the Office of Management and Budget under control number 1840-0535)

Subpart B--Terms of Loans

Sec. 674.31 Promissory note.

(a) *Promissory note.* (1) An institution may use only the promissory note that the Secretary provides. The institution

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may make only nonsubstantive changes, such as changes to the type style or font, or the addition of items such as the borrower's driver's license number, to this note.

(2)(i) The institution shall print the note on one page, front and back; or

(ii) The institution may print the note on more than one page if--

(A) The note requires the signature of the borrower on each page; or

(B) Each page of the note contains both the total number of pages in the complete note as well as the number of each page, e.g., page 1 of 4, page 2 of 4, etc.

(iii) The promissory note must state the exact amount of the minimum monthly repayment amount if the institution chooses the option under 674.33(b).

(b) *Provisions of the promissory note--(1) Interest.* The promissory note must state that--

(i) The rate of interest on the loan is 5 percent per annum on the unpaid balance; and

(ii) No interest shall accrue before the repayment period begins, during certain deferment periods as provided by this subpart, or during the grace period following those deferments.

(2) *Repayment.* (i) Except as otherwise provided in Sec. 674.32, the promissory note must state that the repayment period--

(A) For Direct Loans made on or after October 1, 1980, begins 6 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(B) For Direct Loans made before October 1, 1980 and Federal Perkins Loans, begins 9 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(C) May begin earlier at the borrower's request; and

(D) May vary because of minimum monthly repayments (see Sec. 674.33(b)), extensions of repayment (see Sec. 674.33(c)), forbearance (see Sec. 674.33(d)), or deferments (see Secs. 674.34, 674.35, and 674.36);

(ii) The promissory note must state that the borrower shall repay the loan--

(A) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(B) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Secretary for approval, and the Secretary approves it.

(3) *Cancellation.* The promissory note must state that the unpaid principal, interest, collection costs, and either penalty or late charges on the loan are canceled upon the death or permanent and total disability of the borrower.

(4) *Prepayment.* The promissory note must state that--

(i) The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to reduce the original loan amount and not consider these amounts to be prepayments;

(iii) If the borrower repays amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be treated as prepayments; and

(iv) If, in an academic year other than that described in paragraph (b)(4)(iii) of this section, a borrower repays more than the amount due for any repayment period, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) *Late charge.* (i) An institution shall state in the promissory note that the institution will assess a late charge if the borrower does not--

(A) Repay all or part of a scheduled repayment when due; or

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(ii)(A) The amount of the late charge on a Federal Perkins Loan or a Direct Loan made to cover the cost of attendance for a period of enrollment that began on or after January 1, 1986 must be determined in accordance with Sec. 674.43(b)(2), (3) and (4).

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(B) The amount of the late or penalty charge on a Direct loan made for periods of enrollment that began before January 1, 1986 may be--

(1) For each overdue payment on a loan payable in monthly installments, a maximum monthly charge of \$1 for the first month and \$2 for each additional month.

(2) For each overdue payment on a loan payable in bimonthly installments, a maximum bimonthly charge of \$3.

(3) For each overdue payment on a loan payable in quarterly installments, a maximum charge per quarter of \$6. (See Appendix E of this part)

(iii) The institution may--

(A) Add either the penalty or late charge to the principal the day after the scheduled repayment was due; or

(B) Include it with the next scheduled repayment after the borrower receives notice of the late charge.

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement.

(7) *Assignment.* The promissory note must state that a note may only be assigned to--

(i) The United States or an institution approved by the Secretary; or

(ii) An institution to which the borrower has transferred if that institution is participating in the Federal Perkins Loan program.

(8) *Acceleration.* The promissory note must state that an institution may demand immediate repayment of the entire loan, including any late charges, collection costs and accrued interest, if the borrower does not--

(i) Make a scheduled repayment on time; or

(ii) File cancellation or deferment form(s) with the institution on time.

(9) *Cost of collection.* The promissory note must state that the borrower shall pay all attorney's fees and other loan collection costs and charges.

(10) *Disclosure of information.* The promissory note must state that--

(i) The institution shall disclose to any one national credit bureau the amount of the loan made to the borrower, along with other relevant information;

(ii) If the borrower defaults on the loan, the institution shall disclose that the borrower has defaulted on the loan, along with other relevant information, to the same national credit bureau to which it originally reported the loan; and

(iii) If the borrower defaults on the loan and the loan is assigned to the Secretary for collection, the Secretary may disclose to a national credit bureau that the borrower has defaulted on the loan, along with other relevant information.

(Authority: 20 U.S.C. 1087dd)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (b)(2)(i)(B), (b)(3), and (b)(5)(iii)(A) amended July 21, 1992, effective September 18, 1992. (a)(2), (b)(6), and (b)(10) amended November 30, 1994, effective July 1, 1995. (a)(1) amended December 1, 1995, effective July 1, 1996. (b)(2)(i)(D) revised September 26, 1997, effective October 27, 1997.

Sec. 674.32 Special terms: loans to less than half-time student borrowers.

(a) The promissory note used with regard to loans to borrowers enrolled on a less than half-time basis must state that the repayment period begins--

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of--

(i) Nine months from the date the loan was made, or

(ii) The end of a nine-month period that includes the date the loan was made and began on the date the borrower ceased to be enrolled as at least a half-time regular student at an institution of higher education or comparable institution outside the U.S. approved for this purpose by the Secretary.

(b) The note must otherwise conform to the provisions of Sec. 674.31.

(Authority: 20 U.S.C. 1087dd)

Note: (a)(2)(ii) and authority citation amended July 21, 1992, effective September 18, 1992.

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Sec. 674.33 Repayment

(a) *Repayment Plan.* (1) The institution shall establish a repayment plan before the student ceases to be at least a half-time regular student.

(2) If the last scheduled payment would be \$25 or less the institution may combine it with the next-to-last repayment.

(3) If the installment payment for all loans made to a borrower by an institution is not a multiple of \$5, the institution may round that payment to the next highest dollar amount that is a multiple of \$5.

(4) The institution shall apply any payment on a loan in the following order:

- (i) Collection costs.
- (ii) Late charges.
- (iii) Accrued interest.
- (iv) Principal.

(b) *Minimum monthly repayment--(1) Minimum monthly repayment option.*

(i) An institution may require a borrower to pay a minimum monthly repayment if--

(A) The promissory note includes a minimum monthly repayment provision specifying the amount of the minimum monthly repayment; and

(B) The monthly repayment of principal and interest for a 10-year repayment period is less than the minimum monthly repayment; or

(ii) An institution may require a borrower to pay a minimum monthly repayment if the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than the minimum monthly repayment.

(2) *Minimum monthly repayment of loans from more than one institution.* If a borrower has received loans from more than one institution, the following rules apply:

(i) If the total of the monthly repayments is equal to at least the minimum monthly repayment, no institution may exercise a minimum monthly repayment option.

(ii) If only one institution exercises the minimum monthly repayment option when the monthly repayment would otherwise be less than the minimum repayment option, that

institution receives the difference between the minimum monthly repayment and the repayment owed to the other institution.

(iii) If each institution exercises the minimum repayment option, the minimum monthly repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(3) *Minimum monthly repayment of both Defense and Direct or Federal Perkins loans from one or more institutions.* If the total monthly repayment is less than \$30 and the monthly repayment on a Defense loan is less than \$15 a month, the amount attributed to the Defense loan may not exceed \$15 a month.

(4) *Minimum monthly repayment of loans with differing grace periods and deferments.* If the borrower has received loans with different grace periods and deferments, the institution shall treat each note separately, and the borrower shall pay the applicable minimum monthly payment for a loan that is not in the grace or deferment period.

(5) *Hardship.* The institution may reduce the borrower's scheduled repayments for a period of not more than one year at a time if--

(i) It determines that the borrower is unable to make the scheduled repayments due to hardship (see 674.33(c)); and

(ii) The borrower's scheduled repayment is the minimum monthly repayment described in paragraph (b) of this section.

(6) *Minimum monthly repayment rates.* For the purposes of this section, the minimum monthly repayment rate is--

(i) \$15 for a Defense loan;

(ii) \$30 for a Direct Loan or for a Federal Perkins loan made before October 1, 1992, or for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has an outstanding balance of principal or interest owing on any loan made under this part; or

(iii) \$40 for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has no outstanding balance of principal or interest owing on any loan made under this part.

(7) The institution shall determine the minimum repayment amount under paragraph (b) of this section for loans with repayment installment intervals greater than one month by

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multiplying the amounts in paragraph (b) of this section by the number of months in the installment interval.

(c) *Extension of repayment period--*(1) *Hardship.* The institution may extend a borrower's repayment period due to prolonged illness or unemployment.

(2) *Low-income individual.* (i) For Federal Perkins loans and Direct loans made on or after October 1, 1980, the institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines during the course of the repayment period that the borrower is a "low-income individual." The borrower qualifies for an extension of the repayment period on the basis of low-income status only during the period in which the borrower meets the criteria described in paragraph (c)(2)(i)(A) or (B) of this section. The term low-income individual means the following:

(A) For an unmarried borrower without dependents, an individual whose total income for the preceding calendar year did not exceed 45 percent of the Income Protection Allowance for the current award year for a family of four with one in college.

(B) For a borrower with a family that includes the borrower and any spouse or legal dependents, an individual whose total family income for the preceding calendar year did not exceed 125 percent of the Income Protection Allowance for the current award year for a family with one in college and equal in size to that of the borrower's family.

(ii) The institution shall use the Income Protection Allowance published annually in accordance with section 478 of the HEA in making this determination.

(iii) The institution shall review the borrower's status annually to determine whether the borrower continues to qualify for an extended repayment period based on his or her status as a "low-income individual."

(iv) Upon determining that a borrower ceases to qualify for an extended repayment period under this section, the institution shall amend the borrower's repayment schedule. The term of the amended repayment schedule may not exceed the number of months remaining on the original repayment schedule, provided that the institution may not include the time elapsed during any extension of the repayment period granted under this section in determining the number of months remaining on the original repayment schedule.

(3) Interest continues to accrue during any extension of a repayment period.

(d) *Forbearance.* (1) Forbearance means the temporary cessation of payments, allowing an extension of

time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Upon receipt of a written request and supporting documentation, the institution shall grant the borrower forbearance of principal and, unless otherwise indicated by the borrower, interest renewable at intervals of up to 12 months for periods that collectively do not exceed three years.

(3) The terms of forbearance must be agreed upon, in writing, by the borrower and the institution.

(4) In granting a forbearance under this section, an institution shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (d)(1) of this section.

(5) An institution shall grant forbearance if--

(i) The amount of the payments the borrower is obligated to make on title IV loans each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower's total monthly gross income;

(ii) The institution determines that the borrower should qualify for the forbearance due to poor health or for other acceptable reasons; or

(iii) The Secretary authorizes a period of forbearance due to a national military mobilization or other national emergency.

(6) Before granting a forbearance to a borrower

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(ii) The student borrower pays in a single lump-sum payment--

(A) 90 percent of the outstanding principal balance on the loan under this part;

(B) The interest due on the loan; and

(C) Any collection fees due on the loan.

(2) The Federal share of the compromise repayment must bear the same relation to the institution's share of the compromise repayment as the Federal capital contribution to the institution's loan Fund under this part bears to the institution's capital contribution to the Fund.

(Authority: 20 U.S.C. 425 and 1087dd, Sec. 137(d) of Pub. L. 92-318)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (a)(1) amended July 21, 1992, effective September 18, 1992. Paragraph (c)(2) amended December 21, 1992, effective February 4, 1993. (a)(3), (b), and (c)(1) amended and (d) and (e) added November 30, 1994, effective July 1, 1995. (a)(2) amended; (d)(6) and (d)(7) redesignated, and (d)(6) amended December 1, 1995, effective July 1, 1996. (b)(6)(ii) revised and (d)(8) added September 26, 1997, effective October 27, 1997.

674.34 Deferment of repayment--Federal Perkins loans and Direct loans made on or after July 1, 1993.

(a) The borrower may defer making scheduled installment repayment on a Federal Perkins loan or a Direct loan made on or after July 1, 1993, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is--

(i) Enrolled and in attendance as a regular student in at least a half-time course of study at an eligible institution;

(ii) Enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program approved by the Secretary;

(iii) Engaged in graduate or post-graduate fellowship-supported study (such as a Fulbright grant) outside the United States; or

(iv) Enrolled in a course of study that is part of a rehabilitation training program for disabled individuals approved by the Secretary as described in paragraph (g) of this section.

(2) No borrower is eligible for a deferment under paragraph (b)(1) of this section while serving in a medical internship or residency program, except for a residency program in dentistry.

(3) The institution of higher education at which the borrower is enrolled does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(4) If a borrower is attending an institution of higher education as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to a deferment for 12 months.

(5) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c)(1) The borrower of a Federal Perkins loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in 674.53, 674.54, 674.56, 674.57, 674.58, 674.59, and 674.60.

(2) The borrower of a Direct loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in 674.53, 674.54, 674.56, 674.57, 674.58, and 674.59.

(d) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is seeking and unable to find full-time employment.

(e) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is suffering an economic hardship. To qualify for this deferment, the borrower must provide documentation satisfactory to the institution showing that the borrower--

(1) Has been granted an economic hardship deferment under either the FDSL or FFEL programs for the period of time for which the borrower has requested an economic hardship deferment for his or her Federal Perkins loan;

(2) Is receiving payment under a federal or state public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or state general public assistance;

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(3) Is working full-time and earning a total monthly gross income that does not exceed the greater of--

(i) The monthly earnings of an individual earning the minimum wage described in section 6 of the Fair Labor Standards Act of 1938; or

(ii) An amount equal to 100 percent of the poverty line for a family of two, as determined in accordance with section 673(2) of the Community Service Block Grant Act;

(4) Is not receiving total monthly gross income that exceeds twice the amount specified in paragraph (e)(3) of this section and, after deducting an amount equal to the borrower's monthly payments on federal postsecondary education loans, as determined under paragraph (e)(9) of this section, the remaining amount of that income does not exceed the amount specified in paragraph (e)(3) of this section; or

(5) Is working full-time and has a Federal education debt burden that equals or exceeds 20 percent of the borrower's total monthly gross income, and the borrower's income minus such burden is less than 220 percent of the amount calculated under paragraph (3) of this section.

(6) For a deferment granted under paragraph (e)(4) or (e)(5) of this section, the institution shall require the borrower to submit at least the following documentation to qualify for an initial period of deferment--

(i) Evidence showing the amount of the borrower's most recent total monthly gross income, as defined in section 674.2; and

(ii) Evidence that would enable the institution to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period to other entities for federal postsecondary education loans in accordance with paragraph (e)(9) of this section.

(7) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (e)(3) (e)(4), or (e)(5) of this section, the institution shall require the borrower to submit a copy of the borrower's federal income tax return if the borrower filed a tax return within eight months prior to the date the deferment is requested.

(8) For purposes of paragraphs (e)(3) and (e)(5) of this section, a borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(9) In determining a borrower's eligibility for an economic hardship deferment under paragraph (e) of this section, the institution shall count only the monthly payment amount (or a proportional share if the payments are due less

frequently than monthly) that would have been owed on a federal postsecondary education loan if the loan had been scheduled to be repaid in 10 years from the date the borrower entered repayment, regardless of the length of the borrower's actual repayment schedule or the actual monthly payment amount (if any) that would be owed during the period that the borrower requested an economic hardship deferment.

(f) To qualify for a deferment for study as part of a graduate fellowship program pursuant to paragraph (b)(1)(ii) of this section, a borrower must provide the institution certification that the borrower has been accepted for or is engaged in full-time study in the institution's graduate fellowship program.

(g) To qualify for a deferment for study in a rehabilitation training program, pursuant to paragraph (b)(1)(iv) of this section, the borrower must be receiving, or be scheduled to receive, services under a program designed to rehabilitate disabled individuals and must provide the institution with the following documentation:

(1) A certification from the rehabilitation agency that the borrower is either receiving or scheduled to receive rehabilitation training services from the agency.

(2) A certification from the rehabilitation agency that the rehabilitation program--

(i) Is licensed, approved, certified, or otherwise recognized by one of the following entities as providing rehabilitation training to disabled individuals--

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that--

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower

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to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation.

(h) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f), and (g) of this section and the period described in paragraph (i) of this section in determining the 10-year repayment period.

(i) The borrower need not pay principal and interest does not accrue until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), (f), and (g) of this section.

(Authority: 20 U.S.C. 1087dd)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: Added November 30, 1994, effective July 1, 1995. Control number added June 15, 1995, effective July 1, 1995. (e) amended December 1, 1995, effective July 1, 1996. (h) revised September 26, 1997, effective October 27, 1997.

674.35 Deferment of repayment--Federal Perkins loans made before July 1, 1993.

(a) The borrower may defer repayment on a Federal Perkins Loan made before July 1, 1993, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at--

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is--

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see Sec. 674.59);

(2) On full-time active duty as a member of the National Oceanic and Atmospheric Administration Corps;

(3) A Peace Corps volunteer (see Sec. 674.60);

(4) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see Sec. 674.60);

(5) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization that is exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(6) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a dependent who is so disabled. As used in this paragraph--

(i) "Temporarily totally disabled", with regard to the borrower, means the inability by virtue of an injury or illness to

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attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(ii) "Temporarily totally disabled", with regard to a disabled spouse or other dependent of a borrower, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is one which--

(i) Requires the borrower to hold at least a baccalaureate degree before beginning the internship; and

(ii)(A) A State licensing agency requires an individual to complete as a prerequisite for certification for professional practice or service; or

(B) Is a part of an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(3) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(A) of this section, the borrower must provide the institution with the following certifications:

(i) A statement from an official of the appropriate State licensing agency that successful completion of the internship program is a prerequisite for its certification of the individual for professional service or practice.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying--

(A) That a baccalaureate degree must be attained in order to be admitted into the internship program;

(B) That the borrower has been accepted into its internship program; and

(C) The anticipated dates on which the borrower will begin and complete the program.

(4) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(B) of this section, the borrower must provide the institution with a statement from an authorized official of the internship program certifying that--

(i) A baccalaureate degree must be attained in order to be admitted into the internship program;

(ii) The borrower has been accepted into its institution program; and

(iii) The internship or residency program in which the borrower has been accepted leads to a degree or certificate awarded by an institution of higher education, a hospital or a health-care facility that offers postgraduate training.

(e) The borrower need not repay principal, and interest does not accrue, for a period not in excess of six months--

(1) During which the borrower is--

(i) Pregnant, caring for a newborn baby, or caring for a child immediately after placement of the child through adoption; and

(ii) Not attending an eligible institution of higher education or gainfully employed; and

(2) That begins not later than six months after a period in which the borrower was at least a half-time regular student at an eligible institution.

(f) The borrower need not repay principal, and interest does not accrue, for a period not in excess of one year during which the borrower--

(1) Is a mother of preschool age children;

(2) Has just entered or reentered the work force; and

(3) Is being compensated at a rate which is not more than \$1.00 over the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(g) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see Sec. 674.33(c)).

(h) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f), and (g) of this section and the period described in paragraph (i) of this section when determining the 10-year repayment period.

(i) The borrower need not repay principal, and interest does not accrue, until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), and (f) of this section.

(Authority: 20 U.S.C. 1087dd)

(Approved by the Office of Management and Budget under control number 1940-0535)

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Note: (b)(1), (c)(3) through (c)(5), (d)(3) and (d)(4) introductory text, (d)(4)(iii), and (e)(2) amended July 21, 1992, effective September 18, 1992. (b)(1)(i), (b)(1)(ii), and (c)(5)(i) through (v) added January 12, 1994, effective September 18, 1992. (a), (b)(2), and (c)(5)(iii) amended November 30, 1994, effective July 1, 1995. (c)(1), (c)(3), and (c)(4) revised; (g) removed; (i) redesignated as (g); (h) redesignated as (i); new (h) added September 26, 1997, effective October 27, 1997.

674.36 Deferment of repayment--Direct loans made on or after October 1, 1980, but before July 1, 1993.

(a) The borrower may defer repayment on a Direct Loan made on or after October 1, 1980, but before July 1, 1993, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at--

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is--

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see Sec. 674.59);

(2) A Peace Corps volunteer (see Sec. 674.60);

(3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see Sec. 674.60);

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of

1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization that is exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(5)(i) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a spouse who is so disabled.

(ii) "Temporarily totally disabled" with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(iii) "Temporarily totally disabled" with regard to a disabled spouse, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is an internship--

(i) That requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(ii) That the State licensing agency requires the borrower to complete before certifying the individual for professional practice or service.

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(3) To qualify for an internship deferment, the borrower shall provide to the institution the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (d)(2) of this section; and

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying--

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(e) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see Sec. 674.33)(c)).

(f) The institution shall not include the deferment periods described in paragraphs (b), (c), (d), and (e) of this section and the period described in paragraph (g) of this section when determining the 10-year repayment period.

(g) No repayment of principal or interest begins until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), and (d) of this section.

(Authority: 20 U.S.C. 1087dd)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (b)(1), (c) introductory text, (c)(3), (c)(4), and (g) amended July 21, 1992, effective September 18, 1992. (b)(1)(i), and (b)(1)(ii), and (c)(4)(i) through (v) added January 12, 1994, effective September 18, 1992. (a), (b)(2), and (c)(4)(iii) amended November 30, 1994, effective July 1, 1995. (c)(1), (c)(2), and (c)(3) and (f) revised September 26, 1997, effective October 27, 1997.

Sec. 674.37 Deferment of repayment--Direct loans made before October 1, 1980 and Defense loans.

(a) A borrower may defer repayment--

(1) On a Direct loan made before October 1, 1980 during the periods described in paragraphs (b) through (e) of this section; and

(2) On a Defense loan, during the periods described in paragraphs (b) through (f) of this section.

(b)(1) A borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at--

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) A borrower need not repay principal, and interest does not accrue for a period of up to 3 years during which time the borrower is--

(1) A member of the U.S. Army, Navy, Air Force, Marines or Coast Guard (see Sec. 674.59);

(2) A Peace Corps volunteer (see Sec. 674.60); or

(3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see Sec. 674.60).

(d) The institution shall exclude the deferment periods described in paragraphs (b), (c), and (e) of this section when determining the 10-year repayment period.

(e) An institution may permit the borrower to defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see Sec. 674.33)(c)).

(f) The institution may permit the borrower to defer payment of principal and interest, but interest shall continue to accrue, on a Defense loan for a total of 3 years after the commencement or resumption of the repayment period on a loan, during which he or she is attending an institution of higher education as a less-than-half-time regular student.

(Authority: 20 U.S.C. 425, 1087dd)

Note: (b)(1), (c)(3), and (d) amended July 21, 1992, effective September 18, 1992. (b)(1)(i) and (b)(1)(ii) added January 12, 1994, effective September 18, 1992. (c)(1), (c)(2),

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and (c)(3) and (d) revised September 26, 1997, effective October 27, 1997.

Sec. 674.38 Deferment procedures.

(a)(1) To qualify for a deferment on a loan, a borrower shall submit to the institution to which the loan is owed a written request for a deferment with documentation required by the institution, by the date that the institution establishes.

(2) If the borrower fails to meet the requirements of paragraph (a)(1) of this section, the institution may declare the loan to be in default, and may accelerate the loan.

(b)(1) The institution may grant a deferment to a borrower after it has declared a loan to be a default.

(2) As a condition for a deferment under this paragraph, the institution--

(i) Shall require the borrower to execute a written repayment agreement on the loan; and

(ii) May require the borrower to pay immediately some or all of the amounts previously scheduled to be repaid before the date on which the institution determined that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs.

(c) If the information supplied by the borrower demonstrates that for some or all of the period for which a deferment is requested, the borrower had retained in-school status or was within the initial grace period on the loan, the institution shall--

(1) Redetermine the date on which the borrower was required to commence repayment on the loan;

(2) Deduct from the loan balance any interest accrued and late charges added before the date on which the repayment period commenced, as determined in paragraph (c)(1) of this section; and

(3) Treat in accordance with paragraph (b) of this section, the request for deferment for any remaining portion of the period for which deferment was requested.

(d) The institution shall determine the continued eligibility of a borrower for a deferment at least annually.

(Authority: 20 U.S.C. 425, 1087dd)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (d) added November 30, 1994, effective July 1, 1995.

Sec. 674.39 Postponement of loan repayments in anticipation of cancellation--loans made before July 1, 1993.

(a) An institution shall postpone loan repayments for a 12-month period if the borrower--

(1) Notifies the institution in writing that he or she is teaching or engaged in other services that qualify for loan cancellation under Sec. 674.53, 674.54, 674.55, 674.56, 674.57, or 674.58.

(2) Submits a statement signed by a responsible official in the military, agency, or school employing the borrower, specifying that the borrower is so employed. The statement must describe the borrower's job, list the period of employment, and state whether the job is full- or part-time.

(b) If a borrower has received Defense, Direct, and Federal Perkins loans and is eligible for cancellation benefits on only one, the institution may postpone only repayments on the loan for which cancellation is available.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (a)(1) amended July 21, 1992, effective September 18, 1992.

Sec. 674.40 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received Defense, Direct, and Federal Perkins loans and only one can be canceled, the amount due on the uncanceled loan is the amount established in Sec. 674.31(b)(2), loan repayment terms; Sec. 674.33(b), minimum repayment rates; or Sec. 674.33(c), extension of repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

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Subpart C--Due Diligence

Sec. 674.41 Due diligence--general requirements.

(a) *General.* Each institution shall exercise due diligence in collecting loans by complying with the provisions in this subpart. In exercising this responsibility, each institution shall, in addition to complying with the specific provisions of this subpart--

(1) Keep the borrower informed, on a timely basis, of all changes in the program that affect his or her rights or responsibilities; and

(2) Respond promptly to all inquiries from the borrower.

(b) *Coordination of information.* An institution shall ensure that information available in its offices (including the admissions, business, alumni, placement, financial aid and registrar's offices) is provided to those offices responsible for billing and collecting loans, in a timely manner, as needed to determine--

(1) The enrollment status of the borrower;

(2) The expected graduation or termination date of the borrower;

(3) The date the borrower withdraws, is expelled or ceases enrollment on at least a half-time basis; and

(4) The current name, address, telephone number and Social Security number of the borrower.

(Authority: 20 U.S.C. 424, 1087cc)

Note: Section amended November 30, 1994, effective July 1, 1995.

Sec. 674.42 Contact with the borrower.

(a) *Exit interview.* (1) An institution shall conduct an exit interview with each borrower before he or she leaves the institution. If an individual interview is not feasible, the institution may conduct a group interview. During the interview the institution shall restate for the borrower the terms and outstanding balance of the loan held by the institution, and the borrower's duty to repay the loan in accordance with the repayment schedule. The institution shall explain to the borrower the consequences of defaulting including, at a minimum, possible referral to a collection firm, reporting to a credit bureau, and litigation. Furthermore, the institution shall explain the borrower's rights and responsibilities under the loan, including the following:

(i) The borrower's responsibility to inform the institution immediately of any change of name, address, telephone number, or Social Security number.

(ii) The borrower's rights to forbearance, deferment, cancellation, or postponement of repayment and the procedures for filing for those benefits.

(iii) The borrower's responsibility to contact the institution in a timely manner, before the due date of any payment he or she cannot make.

(2) An institution shall disclose the following information during the exit interview, and shall include it in the promissory note or in another written statement provided to the borrower:

(i) The name and the address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent.

(ii) The name and the address of the party to which payments should be sent.

(iii) The estimated balance owed by the borrower on the loan held by the institution on the date on which the repayment period is scheduled to begin.

(iv) The stated interest rate on the loan.

(v) The repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, and the number, amount, and frequency of required payments.

(vi) An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to prepay all or part of the loan at any time without penalty.

(vii) A description of the charges imposed for failure of the borrower to pay all or part of an installment when due.

(viii) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or the institution to collect on the loan.

(ix) The total of interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

(x) General information with respect to the average indebtedness of students who have loans at that institution under Part E of the Higher Education Act of 1965, as amended.

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(3) The institution shall require the borrower to provide to the institution, during the exit interview--

(i) The borrower's expected permanent address after leaving the institution, regardless of the reason for leaving;

(ii) The name and address of the borrower's expected employer after leaving the institution;

(iii) The name and address of the borrower's next of kin; and

(iv) Any corrections in the institution's records relating to the borrower's name, address, social security number, personal references, and driver's license number.

(4) At the time of the exit interview the institution shall--

(i) Have the borrower sign the repayment schedule;

(ii) Provide a copy of the signed promissory note and the signed repayment schedule to the borrower; and

(iii) Retain signed copies of both the note and the repayment schedule in the institution's files.

(5) The institution shall contact a borrower promptly after it determines that the borrower either has not attended an exit interview that he or she was scheduled to attend or has already left the institution, and shall--

(i) Provide the borrower, either in person or by mail the information described in paragraphs (a)(1) and (2) of this section; and

(ii) Provide a copy of the note and two copies of the repayment schedule to the borrower and request that the borrower promptly sign and return one of the schedules to the institution.

(b) *Contact with the borrower during the initial and post-deferment grace periods.* (1)(i) For loans with a nine-month initial grace period (Direct loans made before October 1, 1980 and Federal Perkins loans), the institution shall contact the borrower three times within the initial grace period.

(ii) For loans with a six-month initial or post deferment grace period (loans not described in paragraph (b)(1)(i) of this section), the institution shall contact the borrower twice during the grace period.

(2)(i) The institution shall contact the borrower for the first time 90 days after the commencement of any grace period. The institution shall at this time remind the borrower of his or

her responsibility to comply with the terms of the loan and shall send the borrower the following information:

(A) The total amount remaining outstanding on the loan account, including principal and interest accruing over the remaining life of the loan.

(B) The date and amount of the next required payment.

(ii) The institution shall contact the borrower the second time 150 days after the commencement of any grace period. The institution shall at this time notify the borrower of the date and amount of the first required payment.

(iii) The institution shall contact a borrower with a nine-month initial grace period a third time 240 days after the commencement of the grace period, and shall then inform him or her of the date and amount of the first required payment.

(Authority: U.S.C. 424, 1087cc, 1087cc-1)

(Approved under the Office of Management and Budget under control number 1840-0581)

Note: (a)(2)(x) added and (b)(1)(i) amended July 21, 1992, effective September 18, 1992. (a) amended November 30, 1994, effective July 1, 1995.

Sec. 674.43 Billing procedures.

(a) The term "billing procedures," as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers when payments are overdue, and to demand payment of overdue amounts. An institution shall use billing procedures that include at least the following steps:

(1) If the institution uses a coupon payment system, it shall send the coupons to the borrower at least 30 days before the first payment is due.

(2) If the institution does not use a coupon system, it shall send to the borrower--

(i) A written notice giving the name and address of the party to which payments are to be sent and a statement of account at least 30 days before the first payment is due; and

(ii) A statement of account at least 15 days before the due date of each subsequent payment.

(3) Notwithstanding paragraph (a)(2)(ii) of this section, if the borrower elects to make payment by means of an electronic transfer of funds from the borrower's bank

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account, the institution shall send to the borrower an annual statement of account.

(b)(1) An institution shall send a first overdue notice within 15 days after the due date for a payment if the institution has not received--

(i) A payment:

(ii) A request for deferment; or

(iii) A request for postponement or for cancellation.

(2) Subject to Sec. 674.47(a), the institution shall assess a late charge for loans made for periods of enrollment beginning on or after January 1, 1986, during the period in which the institution takes any steps described in this section to secure--

(i) Any part of an installment payment not made when due, or

(ii) A request for deferment, cancellation, or postponement of repayment on the loan that contains sufficient information to enable the institution to determine whether the borrower is entitled to the relief requested.

(3) The institution shall determine the amount of the late charge imposed for loans described in paragraph (b)(2) of this section based on either--

(i) Actual costs incurred for actions required under this section to secure the required payment or information from the borrower; or

(ii) The average cost incurred for similar attempts to secure payments or information from other borrowers.

(4) The institution may not require a borrower to pay late charges imposed under paragraph (b)(3) of this section in an amount, for each late payment or request, exceeding 20 percent of the installment payment most recently due.

(5) The institution--

(i) Shall determine the amount of the late or penalty charge imposed on loans not described in paragraph (b)(2) of this section in accordance with Sec. 674.31(b)(5)(See Appendix E); and

(ii) May assess this charge only during the period described in paragraph (b)(2) of this section.

(6) The institution shall notify the borrower of the amount of the charge it has imposed, and whether the institution--

(i) Has added that amount to the principal amount of the loan as of the first day on which the installment was due; or

(ii) Demands payment for that amount in full no later than the due date of the next installment.

(c) If the borrower does not satisfactorily respond to the first overdue notice, the institution shall continue to contact the borrower as follows, until the borrower makes satisfactory repayment arrangements or demonstrates entitlement to deferment, postponement, or cancellation:

(1) The institution shall send a second overdue notice within 30 days after the first overdue notice is sent.

(2) The institution shall send a final demand letter within 15 days after the second overdue notice. This letter must inform the borrower that unless the institution receives a payment or a request for deferment, postponement, or cancellation within 30 days of the date of the letter, it will refer the account for collection or litigation, and will report the default to a credit bureau.

(d) Notwithstanding paragraphs (b) and (c) of this section, an institution may send a borrower a final demand letter if the institution has not within 15 days after the due date received a payment, or a request for deferment, postponement, or cancellation, and if--

(1) The borrower's repayment history has been unsatisfactory, e.g., the borrower has previously failed to make payment(s) when due or to request deferment, postponement, or cancellation in a timely manner, or has previously received a final demand letter; or

(2) The institution reasonably concludes that the borrower neither intends to repay the loan nor intends to seek deferment, postponement, or cancellation of the loan.

(e)(1) An institution that accelerates a loan as provided in Sec. 674.31 (i.e., makes the entire outstanding balance of the loan, including accrued interest and any applicable late charges, payable immediately) shall--

(i) Provide the borrower, at least 30 days before the effective date of the acceleration, written notice of its intention to accelerate; and

(ii) Provide the borrower on or after the effective date of acceleration, written notice of the date on which it accelerated the loan and the total amount due on the loan.

(2) The institution may provide these notices by including them in other written notices to the borrower, including the final demand letter.

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(f) If the borrower does not respond to the final demand letter within 30 days from the date it was sent, the institution shall attempt to contact the borrower by telephone before beginning collection procedures.

(g)(1) An institution shall ensure that any funds collected as a result of billing the borrower are--

(i) Deposited in interest-bearing bank accounts that are--

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(Authority: 20 U.S.C. 424, 1087cc)

(Approved by the Office of Management and Budget under control number 1840-0581)

Note: (a) and (b)(3) introductory texts amended July 21, 1992, effective September 18, 1992. (a)(3) added November 30, 1994, effective July 1, 1995.

Sec. 674.44 Address searches.

(a) If mail, other than unclaimed mail, sent to a borrower is returned undelivered, an institution shall take steps to locate the borrower. These steps must include--

(1) Reviews of records in all appropriate institutional offices;

(2) Reviews of telephone directories or inquiries of information operators in the locale of the borrower's last known address; and

(3) If, after following the procedures in paragraph (a) of this section, an institution is still unable to locate a borrower, the institution may use the Internal Revenue Service skip-tracing service.

(b) If an institution is unable to locate a borrower by the means described in paragraph (a) of this section, it shall--

(1) Use its own personnel to attempt to locate the borrower, employing and documenting efforts comparable to commonly accepted commercial skip-tracing practices; or

(2) Refer the account to a firm that provides commercial skip-tracing services.

(c) If the institution acquires the borrower's address or telephone number through the efforts described in this section, it shall use that new information to continue its efforts to collect on that borrower's account in accordance with the requirements of this subpart.

(d) If the institution is unable to locate the borrower after following the procedures in paragraphs (a) and (b) of this section, the institution shall make reasonable attempts to locate the borrower at least twice a year until--

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under Sec. 674.47(g).

(Authority: 20 U.S.C. 424, 1087cc)

Note: (a)(3) and (d)(1) amended November 30, 1994, effective July 1, 1995.

Sec. 674.45 Collection procedures.

(a) The term "collection procedures," as used in this subpart, includes that series of more intensive efforts, including litigation as described in Sec. 674.46, to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of the institution's billing procedures. If a borrower does not satisfactorily respond to the final demand letter or the following telephone contact made in accordance with Sec. 674.43(f), the institution shall--

(1) Report the defaulted account to any one national credit bureau; and

(2)(i) Use its own personnel to collect the amount due; or

(ii) Engage a collection firm to collect the account.

(b) An institution shall report to the same national credit bureau to which it originally reported the default, according to the reporting procedures of the national credit bureau, any changes in account status and shall respond within one month of its receipt to any inquiry from any credit bureau regarding the information reported on the loan amount.

(c)(1) If the institution, or the firm it engages, pursues collection activity for up to 12 months and does not succeed in

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converting the account to regular repayment status, or the borrower does not qualify for deferment, postponement, or cancellation on the loan, the institution shall either--

(i) Litigate in accordance with the procedures in Sec. 674.46;

(ii) Make a second effort to collect the account as follows:

(A) If the institution first attempted to collect the account using its own personnel, it shall refer the account to a collection firm.

(B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firm; or

(iii) Submit the account for assignment to the Secretary in accordance with the procedures set forth in Sec. 674.50.

(2) If the collection firm retained by the institution does not succeed in placing an account into a repayment status described in paragraph (c)(1) of this section after 12 months of collection activity, the institution shall require the collection firm to return the account to the institution.

(d) If the institution is unable to place the loan in repayment as described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this section, the institution shall continue to make annual attempts to collect from the borrower until--

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under 674.47(g).

(e)(1) Subject to Sec. 674.47(d), the institution shall assess against the borrower all reasonable costs incurred by the institution with regard to a loan obligation.

(2) The institution shall determine the amount of collection costs that shall be charged to the borrower for actions required under this section, and Secs. 674.44, 674.46, 674.48, and 674.49, based on either--

(i) Actual costs incurred for these actions with regard to the individual borrower's loan; or

(ii) Average costs incurred for similar actions taken to collect loans in similar stages of delinquency.

(3) The Fund must be reimbursed for collection costs initially charged to the Fund and subsequently paid by the borrower.

(f)(1) An institution shall ensure that any funds collected from the borrower are--

(i) Deposited in interest-bearing bank accounts that are--

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(g) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

(Authority: 20 U.S.C. 424, 1087cc, 1091a)

(Approved by the Office of Management and Budget under control number 1840-0581)

Note: (c)(1) introductory text, (c)(1)(i), and (c)(1)(ii)(B) amended and new (c)(1)(iii) added July 21, 1992, effective September 18, 1992. (a)(1), (b), and (d) amended and (g) added November 30, 1994, effective July 1, 1995. (c)(1)(ii)(A) revised September 26, 1997, effective October 27, 1997.

Sec. 674.46 Litigation procedures.

(a)(1) If the collection efforts described in 674.45 do not result in the repayment of a loan, the institution shall determine at least annually whether--

(i) The total amount owing on the borrower's account, including outstanding principal, accrued interest, collection costs and late charges on all of the borrower's Federal Perkins, National Direct and National Defense Student Loans held by that institution, is more than \$200;

(ii) The borrower can be located and served with process;

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(iii)(A) The borrower has sufficient assets attachable under State law to satisfy a major portion of the outstanding debt; or

(B) The borrower has income from wages or salary which may be garnished under applicable State law sufficient to satisfy a major portion of the debt over a reasonable period of time;

(iv) The borrower does not have a defense that will bar judgment for the institution; and

(v) The expected cost of litigation, including attorney's fees, does not exceed the amount which can be recovered from the borrower.

(2) The institution shall sue the borrower if it determines that the conditions in paragraph (a)(1) of this section are met.

(3) The institution may sue a borrower in default, even if the conditions in paragraph (a)(1) of this section are not met.

(b) The institution shall assess against and attempt to recover from the borrower--

(1) All litigation costs, including attorney's fees, court costs and other related costs, to the extent permitted under applicable law; and

(2) All prior collection costs incurred and not yet paid by the borrower.

(c)(1) An institution shall ensure that any funds collected as a result of litigation procedures are--

(i) Deposited in interest-bearing bank accounts that are--

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(d) If the institution is unable to collect the full amount owing on the loan after following the procedures set forth in Sec. 674.41 through 674.46, the institution may--

(1) Submit the account to the Secretary for assignment in accordance with the procedures in Sec. 674.50; or

(2) With the Secretary's approval, refer the account to the Department for collection.

(Authority: 20 U.S.C. 424, 1087cc)

Note: (a)(1) amended November 30, 1994, effective July 1, 1995.

Sec. 674.47 Costs chargeable to the Fund.

(a) *General: Billing costs.* (1) Except as provided in paragraph (c) of this section, the institution shall assess against the borrower, in accordance with Sec. 674.43(b)(2) the cost of actions taken with regard to past-due payments on the loan.

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the late charges, the institution may charge the Fund only that portion of the late charges which represents the cost of telephone calls to the borrower pursuant to Sec. 674.43.

(b) *General: Collection costs.* (1) Except as provided in paragraph (d) of this section, the institution shall assess against the borrower, in accordance with Sec. 674.45(e) and 674.46(b), the costs of actions taken on the loan obligation pursuant to Secs. 674.44, 674.45, 674.46, 674.48 and 674.49.

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the penalty or late charges, the institution may charge the Fund for only that unpaid portion of the cost of telephone calls to the borrower made pursuant to Sec. 674.43 to demand payment of overdue amounts on the loan.

(c) *Waiver: Late charges.* The institution may waive late charges assessed against a borrower who repays the full amount of the past-due payments on a loan.

(d) *Waiver: Collection costs.* Before filing suit on a loan, the institution may waive collection costs as follows:

(1) The institution may waive the percentage of collection costs applicable to the amount then past-due on a loan equal to the percentage of that past-due balance that the borrower pays within 30 days after the date on which the borrower and the institution enter into a written agreement on the loan.

(2) The institution may waive all collection costs in return for a lump-sum payment of the full amount of principal and interest outstanding on a loan.

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(e) *Limitations on costs charged to the Fund.* The institution may charge to the Fund the following collection costs waived under paragraph (d) of this section or not paid by the borrower;

(1) A reasonable amount for the cost of a successful address search required in Sec. 674.44(b).

(2) Costs related to the use of credit bureaus as provided in Sec. 674.45(b)(1).

(3) For first collection efforts pursuant to Sec. 674.45(a)(2), an amount that does not exceed 30 percent of the amount of principal, interest and late charges collected.

(4) For second collection efforts pursuant to Sec. 674.45(c)(1)(ii), an amount that does not exceed 40 percent of the amount of principal, interest and late charge collected.

(5) For collection costs resulting from litigation, including attorney's fees, an amount that does not exceed the sum of--

(i) Court costs specified in 28 U.S.C. 1920;

(ii) Other costs incurred in bankruptcy proceedings in taking actions required or authorized under Sec. 674.49;

(iii) Costs of other actions in bankruptcy proceedings to the extent that those costs, together with costs described in paragraph (e)(5)(ii) of this section, do not exceed 40 percent of the total amount of judgment obtained on the loan; and

(iv) 40 percent of the total amount recovered from the borrower in any other proceeding.

(6) If a collection firm agrees to perform or obtain the performance of both collection and litigation services on a loan, an amount for both functions that does not exceed the sum of 40 percent of the amount of principal, interest and late charges collected on the loan, plus court costs specified in 28 U.S.C. 1920.

(f) *Records.* For audit purposes, an institution shall support the amount of collection costs charged to the Fund with appropriate documentation, including telephone bills and receipts from collection firms. The documentation must be maintained in the institution's files as provided in Sec. 674.19.

(g) *Cessation of collection activity of defaulted accounts.* (1) An institution may cease collection activity on a defaulted account with a balance of less than \$25, including outstanding principal, accrued interest, collection costs, and late charges, if the borrower has been billed for this balance in accordance with section 674.43(a).

(2) An institution may cease collection activity on a defaulted account with a balance of less than \$200, including outstanding principal, accrued interest, collection costs, and late charges, if--

(i) The institution has carried out the due diligence procedures described in subpart C of the part with regard to this account; and

(ii) For a period of at least 4 years, the borrower has not made a payment on the account, converted the account to regular repayment status, or applied for a deferment, postponement, or cancellation on the account.

(h) *Write-offs of accounts of less than \$5.* (1) Notwithstanding any other provision in this subpart, an institution may write off an account with a balance of less than \$5, including outstanding principal, accrued interest, collection costs, and late charges.

(2) An institution that writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

(Authority: 20 U.S.C. 424, 1087cc)

Note: (a)(2) amended July 21, 1992, effective September 18, 1992. Paragraphs (d) and (e) amended December 21, 1992, effective February 4, 1993. (g) amended November 30, 1994, effective July 1, 1995. (g) amended and (h) added December 1, 1995, effective July 1, 1996.

Sec. 674.48 Use of contractors to perform billing and collection or other program activities.

(a) The institution is responsible for ensuring compliance with the billing and collection procedures set forth in this subpart. The institution may use employees to perform these duties or may contract with other parties to perform them.

(b) An institution that contracts for performance of any duties under this subpart remains responsible for compliance with the requirements of this subpart in performing these duties, including decisions regarding cancellation, postponement, or deferment of repayment, extension of the repayment period, other billing and collection matters, and the safeguarding of all funds collected by its employees and contractors.

(c) If an institution uses a billing service to carry out billing procedures under Sec. 674.43, the institution shall ensure that the service--

(1) Provides at least quarterly, a statement to the institution which shows--

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<p>(i) Its activities with regard to each borrower;</p> <p>(ii) Any changes in the borrower's name, address, telephone number, and, if known, any changes to the borrower's Social Security number; and</p> <p>(iii) Amounts collected from the borrower;</p> <p>(2) Provides at least quarterly, a statement to the institution with a listing of its charges for skip-tracing activities and telephone calls;</p> <p>(3) Does not deduct its fees from the amount it receives from borrowers;</p> <p>(4)(i) Instructs the borrower to remit payment directly to the institution;</p> <p>(ii) Instructs the borrower to remit payment to a lock-box maintained for the institution; or</p> <p>(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days; and</p> <p>(5) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.</p> <p>(d) If the institution uses a collection firm, the institution shall ensure that the firm--(1)(i) Instructs the borrower to remit payment directly to the institution;</p> <p>(ii) Instructs the borrower to remit payment to a lockbox maintained for the institution; or</p> <p>(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days, after deducting its fees if authorized to do so by the institution; and</p> <p>(2) Provides at least quarterly, a statement to the institution which shows--</p> <p>(i) Its activities with regard to each borrower;</p> <p>(ii) Any changes in the borrower's name, address, telephone number and, if known, any changes to the borrower's Social Security number;</p> <p>(iii) Amounts collected from the borrower; and</p> <p>(3) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.</p>	<p>(e) If an institution uses a billing service to carry out Sec. 674.43 (billing procedures), it may not use a collection firm that--</p> <p>(1) Owns or controls the billing service;</p> <p>(2) Is owned or controlled by the billing service; or</p> <p>(3) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.</p> <p>(f)(1) An institution that employs a third party to perform billing or collection services required under this subpart shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance in accordance with the requirements of this paragraph.</p> <p>(2) If the institution does not authorize the third party to deduct its fees from payments from borrowers, the institution shall ensure that the party is bonded or insured in an amount not less than the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party.</p> <p>(3) In the institution authorizes the third party performing collection services to deduct its fees from payments from borrowers, the institution shall ensure that--</p> <p>(i) If the amount of funds that the institution reasonably expects to be paid over a two-month period on accounts it refers to the party is less than \$100,000, the party is bonded or insured in an amount equal to the lesser of--</p> <p>(A) Ten times the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party; or</p> <p>(B) The total amount of funds that the party demonstrates will be repaid over a two-month period on all accounts of any kind on which it performs billing and collection services; and</p> <p>(ii) If the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party is more than \$100,000, the institution shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance--</p> <p>(A) Naming the institution as beneficiary; and</p> <p>(B) In an amount not less than the amount of funds reasonably expected to be repaid on accounts referred by the institution to the party during a two-month period.</p> <p>(4) The institution shall review annually the amount of repayments expected to be made on accounts it refers to a</p>
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third party for billing or collection services, and shall ensure that the amount of the fidelity bond or insurance coverage maintained continues to meet the requirements of this paragraph.

(Authority: 20 U.S.C. 424, 1087cc).

(Approved by the Office of Management and Budget under control number 1840-0581)

Note: (c)(4)(iii) and (d)(1)(iii) amended November 30, 1994, effective July 1, 1995.

Sec. 674.49 Bankruptcy of borrower.

(a) *General.* If an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of meeting of creditors, the institution and its agents shall immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower.

(b) *Proof of claim.* The institution shall file a proof of claim in the bankruptcy proceeding, unless, in the case of a proceeding under Chapter 7 of the Bankruptcy Code, the notice of meeting of creditors states that the borrower has no assets.

(c) *Borrower's request for determination of dischargeability.* (1) The institution shall follow the procedures in this paragraph if it is properly served with a complaint in a proceeding under chapter 7, 11, 12, or 13 of the Bankruptcy Code, or under 11 U.S.C. 1328(b), for a determination of dischargeability under 11 U.S.C. 523(a)(8)(B) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents.

(2) If more than seven years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief in bankruptcy, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) If less than seven years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief, the institution shall determine, on the basis of reasonably available information, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents.

(4) If the institution concludes that repayment would not impose an undue hardship, the institution shall determine whether the costs reasonably expected to be incurred to

oppose discharge will exceed one-third of the total amount owed on the loan, including principal, interest, late charges and collection costs.

(5) If the expected costs of opposing discharge of such a loan do not exceed one-third of the total amount owed on the loan, the institution shall--

(i) Oppose the borrower's request for a determination of dischargeability; and

(ii) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(6) In opposing a request for a determination of dischargeability, the institution may compromise a portion of the amount owed on the loan if it reasonably determines that the compromise is necessary in order to obtain a judgment on the loan.

(d) *Request for determination of non-dischargeability.* The institution may file a complaint for a determination that a loan obligation is not dischargeable and for judgment on the loan if the institution would have been required under paragraph (c) of this section to oppose a request for a determination of dischargeability with regard to that loan.

(e) *Chapter 13 repayment plan.* (1) The institution shall follow the procedures in this paragraph in response to a repayment plan proposed by a borrower who has filed for relief under Chapter 13 of the Bankruptcy Code.

(2) The institution is not required to respond to a proposed repayment plan, if--

(i) The borrower proposes under the repayment plan to repay all principal, interest, late charges and collection costs on the loan; or

(ii) The repayment plan makes no provision with regard either to the loan obligation or to general unsecured claims.

(3)(i) If the borrower proposes under the repayment plan to repay less than the total amount owed on the loan, the institution shall determine from its own records and court documents--

(A) The amount of the loan obligation dischargeable under the plan by deducting the total payments on the loan proposed under the plan from the total amount owed;

(B) Whether the plan or the classification of the loan obligation under the proposed plan meets the requirements of section 1325 of the Code; and

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(C) Whether grounds exist under 11 U.S.C. 1307 to move for conversion or dismissal of the Chapter 13 case.

(ii) If the institution reasonably expects that costs of the appropriate actions will not exceed one-third of the dischargeable loan debt, the institution shall--

(A) Object to confirmation of a proposed plan that does not meet the requirements of 11 U.S.C. 1325; and

(B) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307.

(4)(i) The institution shall monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a "hardship discharge" under 11 U.S.C. 1328(b), and the institution holds a loan that entered repayment status more than seven years, excluding periods of deferment, before the borrower filed the petition for relief in bankruptcy, the institution shall determine from its own records and information derived from documents filed with the court--

(A) Whether grounds exist under 11 U.S.C. 1307 to convert or dismiss the case; and

(B) Whether the borrower has demonstrated entitlement to the "hardship discharge" by meeting the requirements of 11 U.S.C. 1328(b).

(ii) If the institution reasonably expects that costs of the appropriate actions, when added to the costs already incurred in taking actions authorized under this section, will not exceed one-third of the dischargeable loan debt, the institution shall--

(A) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307; or

(B) Oppose the requested discharge where the debtor has not demonstrated that the requirements of 11 U.S.C. 1328(b) are met.

(f) *Resumption of collection from the borrower.* The institution shall resume billing and collection action prescribed in this subpart after--

(1) The borrower's petition for relief in bankruptcy has been dismissed;

(2) The borrower has received a discharge under 11 U.S.C. 727, 11 U.S.C. 1141, or 11 U.S.C. 1228, unless--

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii)(A) The loan entered the repayment period more than seven years, excluding periods of deferment, before the filing of the petition, and

(B) The loan is not excepted from discharge under other applicable provisions of the Code; or

(3) The borrower has received a discharge under 11 U.S.C. 1328(a) or 1328(b), unless--

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii)(A) The loan entered the repayment period more than seven years, excluding periods of deferment, before the filing of the petition; and

(B) The borrower's plan approved in the bankruptcy proceeding made some provision with regard to either the loan obligation or unsecured debts in general.

(g) *Termination of collection and write-off.* (1) An institution shall terminate all collection action and write off a loan if it receives--

(i) A general order of discharge on a borrower owing a student loan obligation which entered the repayment period more than seven years, exclusive of periods of deferment, from the date on which a petition for relief under Chapter 7, 11 or 12 of the Bankruptcy Code was filed; or

(ii) A judgment that repayment of the debt would constitute an undue hardship, and that the debt is therefore dischargeable.

(iii) A judgment that repayment of the debt would constitute an undue hardship, and that the debt is therefore dischargeable.

(2) If an institution receives a repayment from a borrower after a loan has been discharged, it shall deposit that payment in its Fund.

(Authority: 20 U.S.C. 424, 1087cc)

(Approved by the Office of Management and Budget under control number 1840-0581)

Note: (c)(1), (2), and (3); (e)(4)(i); (f) introductory text, (f)(2), (f)(2)(ii)(A), and (f)(3); (h)(1)(i) and (ii) amended July 21, 1992, effective September 18, 1992. (e)(4)(i)(A) and (B) and (f)(2)(i) and (ii) added January 12, 1994, effective September 18, 1992. (a) and (g) amended November 30, 1994, effective July 1, 1995.

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Sec. 674.50 Assignment of defaulted loans to the United States.

(a) An institution may submit a defaulted loan note to the Secretary for assignment to the United States if--

(1) The institution has been unable to collect on the loan despite complying with the diligence procedures, including at least a first level collection effort as described in Sec. 674.45(a) and litigation, if required under Sec. 674.46(a), to the extent these actions were required by regulations in effect on the date the loan entered default;

(2) The amount of the borrower's account to be assigned, including outstanding principal, accrued interest, collection costs and late charges is \$25.00 or greater; and

(3) The loan has been accelerated.

(b) An institution may submit a defaulted note for assignment only during the submission period established by the Secretary.

(c) An institution shall submit to the Secretary the following documents for any loan it proposes to assign;

(1) An assignment form provided by the Secretary and executed by the institution, which must include a certification by the institution that it has complied with the requirements of this subpart, including at least a first level collection effort as described in Sec. 674.45(a) in attempting collection on the loan.

(2) The original promissory note or a certified copy of the original note.

(3) A copy of the repayment schedule.

(4) A certified copy of any judgment order entered on the loan.

(5) A complete statement of the payment history.

(6) Copies of all approved requests for deferment and cancellation.

(7) A copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan.

(8) Documentation that the institution has withdrawn the loan from any firm that it employed for address search, billing, collection or litigation services, and has notified that firm to cease collection activity on the loans.

(9) Copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in

bankruptcy and whose loan obligation is determined to be nondischargeable.

(10) Documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section if the institution has a cohort default rate that is equal to or greater than 20 percent as of June 30 of the second year preceding the submission period.

(d) Except as provided in paragraph (e) of this section, and subject to paragraph (g) of this section, the Secretary accepts an assignment of a note described in paragraph (a) of this section and submitted in accordance with paragraph (c) of this section.

(e) The Secretary does not accept assignment of a loan if--

(1) The institution has not provided the Social Security number of the borrower;

(2) The borrower has received a discharge in bankruptcy, unless--

(i) The bankruptcy court has determined that the loan obligation is nondischargeable and has entered judgment against the borrower; or

(ii) A court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order;

(3) The institution has initiated litigation against the borrower, unless the judgment has been entered against the borrower and assigned to the United States; or

(4) The borrower has been granted cancellation due to death or has filed for or been granted cancellation due to permanent and total disability.

(f)(1) The Secretary provides an institution written notice of the acceptance of the assignment of the note. By accepting assignment, the Secretary acquires all rights, title, and interest of the institution in that loan.

(2) The institution shall endorse and forward to the Secretary any payment received from the borrower after the date on which the Secretary accepted the assignment, as noted in the written notice of acceptance.

(g)(1) The Secretary may determine that a loan assigned to the United States is unenforceable in whole or in part because of the acts or omissions of the institution or its agent. The Secretary may make this determination with or without a judicial determination regarding the enforceability of the loan.

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(2) The institution shall reimburse the Fund for that portion of the outstanding balance on a loan assigned to the United States which the Secretary determines to be unenforceable because of an act or omission of that institution or its agent.

(3) Upon reimbursement to the Fund by the institution, the Secretary shall transfer all rights, title and interest of the United States in the loan to the institution for its own account.

(h) An institution shall consider a borrower whose loan has been assigned to the United States for collection to be in default on that loan for the purpose of eligibility for title IV financial assistance, until the borrower provides the institution confirmation from the Secretary that he or she has made satisfactory arrangements to repay the loan.

(Authority: 20 U.S.C. 424, 1087cc)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (c)(6) amended July 21, 1992, effective September 18, 1992. Paragraph (a)(2) amended December 21, 1992, effective February 4, 1993. (c)(10) amended November 30, 1994, effective July 1, 1995.

Subpart D--Loan Cancellation

Sec. 674.51 Special definitions.

The following definitions apply to this Subpart:

(a) *Academic year or its equivalent for elementary and secondary schools and special education:* (1) One complete school year, or two half years from different school years, excluding summer sessions, that are complete and consecutive and generally fall within a 12-month period.

(2) If such a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

(b) *Academic year or its equivalent for institutions of higher education:* A period of time in which a full-time student is expected to complete--

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) *Title I Children:* Children of ages 5 through 17 who are counted under section 1124(c)(1) of the Elementary and Secondary Education Act of 1965, as amended.

(d) *Children and youth with disabilities:* Children and youth from ages 3 through 21, inclusive, who require special education and related services because they have disabilities as defined in section 602(a)(1) of the Individuals with Disabilities Education Act.

(e) *Early intervention services:* Those services defined in section 672(2) of the Individuals with Disabilities Education Act that are provided to infants and toddlers with disabilities.

(f) *Elementary school:* A school that provides elementary education, including education below grade 1, as determined by--

(1) State law; or

(2) The Secretary, if the school is not in a State.

(g) *Handicapped children:* Children of ages 3 through 21 inclusive who require special education and related services because they are--

(1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech and language impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed;

(7) Orthopedically impaired;

(8) Specific learning disabled; or

(9) Otherwise health impaired.

(h) *High-risk children:* Individuals under the age of 21 who are low-income or at risk of abuse or neglect, have been abused or neglected, have serious emotional, mental, or behavioral disturbances, reside in placements outside their homes, or are involved in the juvenile justice system.

(i) *Infants and toddlers with disabilities:* Infants and toddlers from birth to age 2, inclusive, who need early intervention services for specified reasons, as defined in section 672(1) of the Individuals with Disabilities Education Act.

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(j) *Local educational agency*: (1) A public board of education or other public authority legally constituted within a State to administer, direct, or perform a service function for public elementary or secondary schools in a city, county, township, school district, other political subdivision of a State; or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(k) *Low-income communities*: Communities in which there is a high concentration of children eligible to be counted under title I of the Elementary and Secondary Education Act of 1965, as amended.

(l) *Medical technician*: An allied health professional (working in fields such as therapy, dental hygiene, medical technology, or nutrition) who is certified, registered, or licensed by the appropriate State agency in the State in which he or she provides health care services. An allied health professional is someone who assists, facilitates, or complements the work of physicians and other specialists in the health care system.

(m) *Nurse*: A licensed practical nurse, a registered nurse, or other individual who is licensed by the appropriate State agency to provide nursing services.

(n) *Qualified professional provider of early intervention services*: A provider of services as defined in section 672(2) of the Individuals with Disabilities Education Act.

(o) *Secondary school*: (1) A school that provides secondary education, as determined by--

(i) State law; or

(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(p) *State education agency*: (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(q) *Teacher*: (1) A teacher is a person who provides--

(i) Direct classroom teaching;

(ii) Classroom-type teaching in a non-classroom setting; or

(iii) Educational services to students directly related to classroom teaching such as school librarians or school guidance counselors.

(2) A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal educational services to students.

(3) An individual who provides one of the following services does not qualify as a teacher unless that individual is licensed, certified, or registered by the appropriate State education agency for that area in which he or she is providing related special educational services, and the services provided by the individual are part of the educational curriculum for handicapped children:

(i) Speech and language pathology and audiology;

(ii) Physical therapy;

(iii) Occupational therapy;

(iv) Psychological and counseling services; or

(v) Recreational therapy.

(r) *Teaching in a field of expertise*: The majority of classes taught are in the borrower's field of expertise.

(Authority: 20 U.S.C. 425, 1087ee, 1141, and 1401(1)).

Note: Amended November 30, 1994, effective July 1, 1995.

Sec. 674.52 Cancellation procedures.

(a) *Application for cancellation*. To qualify for cancellation of a loan, a borrower shall submit to the institution to which the loan is owed, by the date that the institution establishes, both a written request for cancellation and any documentation required by the institution to demonstrate that the borrower meets the conditions for the cancellation requested.

(b) *Part-time employment*. (i) An institution may refuse a request for cancellation based on a claim of simultaneously teaching in two or more schools or institutions if it cannot determine easily from the documentation supplied by the borrower that the teaching is full-time. However, it shall grant the cancellation if one school official certifies that a teacher worked full-time for a full academic year.

(ii) An institution may refuse a request for cancellation based on a claim of simultaneous employment as a nurse or medical technician in two or more facilities if it cannot determine easily from the documentation supplied by the borrower that the combined employment is full-time.

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However, it shall grant the cancellation if one facility official certifies that a nurse or medical technician worked full-time for a full year.

(2) If the borrower is unable due to illness or pregnancy to complete the academic year, the borrower still qualifies for the cancellation if--

(i) The borrower completes the first half of the academic year, and has begun teaching the second half; and

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract for the academic year for purposes of salary increment, tenure, and retirement.

(c) *Cancellation of a defaulted loan.* (1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation based on teaching, volunteer, or military service by complying with the requirements of paragraph (a) of this section.

(2) A borrower whose defaulted loan has been accelerated--

(i) May qualify for a loan cancellation for services performed before the date of acceleration; and

(ii) Cannot qualify for a cancellation for services performed on or after the date of acceleration.

(3) An institution shall grant a request for cancellation on account of the death or disability of the borrower without regard to the repayment status of the loan.

(d) *Concurrent deferment period.* (1) For loans made prior to July 1, 1993, the Secretary considers a borrower's loan deferment under 674.35, 674.36, and 674.37 to run concurrently with any period for which a cancellation for military, Peace Corps, or ACTION program service is granted.

(2) For loans made on or after July 1, 1993, the Secretary considers a borrower's loan deferment under 674.34 to run concurrently with any period for which a cancellation under 674.53, 674.56, 674.57, or 674.58 is granted.

(e) *National community service.* No borrower who has received a benefit under subtitle D of title I of the National and Community Service Act of 1990 may receive a cancellation under this subpart.

(Authority: 20 U.S.C. 425, 1087ee.)

Note: (b), (c), and (d) amended and (e) added November 30, 1994, effective July 1, 1995. (d)(2) revised September 26, 1997, effective October 27, 1997.

Sec. 674.53 Teacher cancellation--Federal Perkins loans and Direct loans made on or after July 23, 1992.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.*

(1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made on or after July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school that--

(i) Is in a school district that qualified for funds, in that year, under title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of title I children.

(2) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(3)(i) The Secretary selects schools under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of title I children attending those schools.

(iii) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(5) A teacher, who performs service in a school that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school and will be eligible for loan cancellation pursuant to paragraph (a) of this section in subsequent years.

(6) If a list of eligible institutions in which a teacher performs services under paragraph (a)(1) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make the service determination.

(b) *Cancellation for full-time teaching in special education.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or

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Direct loan made on or after July 23, 1992, for the borrower's service as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in a public or other nonprofit elementary or secondary school system.

(c) *Cancellation for full-time teaching in fields of expertise.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for full-time teaching in mathematics, science, foreign languages, bilingual education, or any other field of expertise where the State education agency determines that there is a shortage of qualified teachers.

(d) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a), (b), or (c) of this section, a borrower shall teach full-time for a complete academic year or its equivalent.

(2) Cancellation rates are--

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(e) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(f) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C 1087ee)

Note: Added November 30, 1994, effective July 1, 1995.

674.54 Teacher cancellation--Federal Perkins loans and Direct loans made before July 23, 1992.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made before July 23, 1992, for full-time teaching in

a public or other nonprofit elementary or secondary school that--

(i) Is in a school district that qualifies for funds, in that year, under title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of title I children.

(2)(i) The Secretary selects schools under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of title I children attending those schools.

(iii) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(3) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(4) A teacher, who performs service in a school that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school and will be eligible for loan cancellation pursuant to paragraph (a) of this section, in subsequent years.

(5) If a list of eligible institutions in which a teacher performs services under paragraph (a)(1) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make the service determination.

(b) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made before July 23, 1992, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(c) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a) or (b) (low-income or handicapped) of this

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section, a borrower shall teach full time for a complete academic year, or its equivalent.

outstanding balance on a borrower's Defense loan for full-time teaching in a public or other nonprofit elementary or secondary school that--

(2) Cancellation rates are--

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C. 1087ee)

Note: (a) and (b)(1) amended November 30, 1994, effective July 1, 1995.

Sec. 674.55 Teacher cancellation--Defense loans.

(a) *Cancellation for full-time teaching.* (1) An institution shall cancel up to 50 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in--

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school.

(2) The cancellation rate is 10 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year, or its equivalent, of teaching.

(b) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution shall cancel up to 100 percent of the

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(4) Cancellation for full-time teaching under paragraph (c) of this section is available only for teaching beginning with the academic year 1967-68.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C. 425(b)(3).)

674.56 Employment cancellation--Federal Perkins loans and Direct loans made on or after July 23, 1992.

(a) *Cancellation for full-time employment as a nurse or medical technician.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for full-time employment as a nurse or medical technician providing health care services.

(b) *Cancellation for full-time employment in a public or private nonprofit child or family service agency.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of such children.

(c) *Cancellation for service as a qualified professional provider of early intervention services.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 676(b)(9) of the Individuals With Disabilities Education Act.

(d) *Cancellation rates.* (1) To qualify for cancellation under paragraphs (a), (b), and (c) of this section, a borrower must work full-time for 12 consecutive months.

(2) Cancellation rates are--

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time employment;

(ii) 20 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time employment; and

(iii) 30 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time employment.

(Authority: 20 U.S.C. 1087ee)

Note: Section added November 30, 1994, effective July 1, 1995.

674.57 Cancellation for law enforcement or corrections officer service--Federal Perkins loans and Direct loans for loans made on or after November 29, 1990.

(a)(1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

(2) An eligible employing agency is an agency--

(i) That is a local, State, or Federal law enforcement or corrections agency;

(ii) That is public-funded; and

(iii) The principal activities of which pertain to crime prevention, control, or reduction or the enforcement of the criminal law.

(3) Agencies that are primarily responsible for enforcement of civil, regulatory, or administrative laws are ineligible employing agencies.

(4) A borrower qualifies for cancellation under this section only if the borrower is--

(i) A sworn law enforcement or corrections officer; or

(ii) A person whose principal responsibilities are unique to the criminal justice system.

(5) To qualify for a cancellation under this section, the borrower's service must be essential in the performance of the eligible employing agency's primary mission.

(6) The agency must be able to document the employee's functions.

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(7) A borrower whose principal official responsibilities are administrative or supportive does not qualify for cancellation under this section.

(b)(1) To qualify for cancellation under paragraph (a) of this section, a borrower shall work full-time for 12 consecutive months.

(2) Cancellation rates are--

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time employment;

(ii) 20 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time employment; and

(iii) 30 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time employment.

(Authority: 20 U.S.C. 465)

Note: Section added November 30, 1994, effective July 1, 1995.

Sec. 674.58 Cancellation for service in a Head Start program.

(a) An institution shall cancel up to 100 percent of a borrower's Direct or Federal Perkins loan, plus the interest on the unpaid balance, for service as a full-time staff member in a "Head Start" program if--

(1) The program operates for a complete academic year, or its equivalent; and

(2) The borrower's salary does not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start program.

(b) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching service.

(c)(1) "Head Start" is a preschool program carried out under the Head Start Act (Subchapter B, Chapter 8 of Title VI of Pub. L. 97-35, the Budget Reconciliation Act of 1981, as amended; formerly authorized under section 222(a)(1) of the Economic Opportunity Act of 1964). (42 U.S.C. 2809 (a)(1))

(2) "Full-time staff member" is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start program.

(Authority: 20 U.S.C. 425.)

Sec. 674.59 Cancellation for military service.

(a) *Cancellation on a Defense loan.* (1) An institution shall cancel up to 50 percent of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12 1/2 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for the first complete year of qualifying service, and for each consecutive year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(b) *Cancellation of a Direct or Federal Perkins loan.* (1) An institution shall cancel up to 50 percent of a Direct or Federal Perkins loan for service as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) The cancellation rate is 12 1/2 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(Authority: 20 U.S.C. 425(b)(3) and 1087ee.)

Sec. 674.60 Cancellation for volunteer service--Perkins loans.

(a) An institution shall cancel up to 70 percent of the outstanding balance on a Perkins loan for service as a volunteer under--

(1) The Peace Corps Act; or

(2) The Domestic Volunteer Service Act of 1973 (ACTION programs).

(b) Cancellation rates are--

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(1) Fifteen percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second twelve-month periods of service;

(2) Twenty percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth twelve-month periods of service.

(Authority: 20 U.S.C. 1087ee.)

Note: (a)(2) amended July 21, 1992, effective September 18, 1992.

674..61 Cancellation for death or disability.

(a) *Death.* An institution shall cancel the unpaid balance of a borrower's Defense, Direct, or Perkins loan, including interest, if the borrower dies. The lending institution shall cancel the loan on the basis of a death certificate or other evidence of death that is conclusive under State law.

(b) *Permanent and total disability.* (1) An institution shall cancel the unpaid balance of a Defense, Direct, or Perkins loan, including interest, if the borrower becomes permanently and totally disabled after receiving the loan. The lending institution shall decide whether to cancel the loan based on medical evidence, certified by a physician, which the borrower or his or her representative supplies.

(2) Permanent and total disability is the inability to work and earn money or to attend an institution because of an impairment that is expected to continue indefinitely or result in death.

(c) *No Federal reimbursement.* No Federal reimbursement is made to an institution for cancellation of loans due to death or disability.

(d) *Retroactive. Cancellation for death or disability applies retroactively to all Defense, Direct or Perkins loans.*

(Authority: 20 U.S.C. 425 and 1087dd and Sec. 130(g)(2) of the Education Amendments of 1976, Pub. L. 94-482)

(Approved by the Office of Management and Budget under control number 1840-0535)

Note: (b)(2) amended November 30, 1994, effective July 1, 1995.

Sec. 674.62 No cancellation for prior service--no repayment refunded.

(a) No portion of a loan may be canceled for teaching, Head Start, volunteer or military service if the borrower's service is performed--

(1) During the same period that he or she received the loan; or

(2) Before the date the loan was disbursed to the borrower.

(b) The institution shall not refund a repayment made during a period for which the borrower qualified for a cancellation unless the borrower made the payment due to an institutional error.

(Authority: 20 U.S.C. 425 and 1067ee)

Sec. 674.63 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest canceled under 674.55 and 674.59(a).

(2) The institution's share of canceled principal and interest is computed by the following ratio:

$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) *Reimbursement for Direct and Federal Perkins loan cancellation.* The Secretary pays an institution each award year the principal and interest canceled from its student loan fund under 674.53, 674.54, 674.56, 674.57, 674.58, 674.59(b), and 674.60. The institution shall deposit this amount in its Fund.

(Authority: 20 U.S.C. 428 and 1087ee)

Note: (a) and (b) amended November 30, 1994, effective July 1, 1995.

Appendices A through D [Removed]

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Appendix E--Examples for Computing Maximum Penalty Charges (6 Months Unpaid Overdue Payments) on Direct Loans Made for Periods of Enrollment Before January 1, 1986

Note.--In the below table of examples, the Cumulative Maximum Subtotal line contains the maximum penalty charges that can be assessed on an NDSL borrower for any given installment that was missed on its due date. For example, if three borrowers, all on different repayment schedules, owed and missed their first installment payment on January 2 and all three made their next payment on April 10, the maximum penalty charges that could be assessed each individual borrower would be as follows: \$16 to the monthly repayment schedule borrower; \$9 to the bimonthly repayment schedule borrower; and \$18 to the quarterly repayment schedule borrower.

Monthly repayment schedule	Installment due date--Missed payments						Separate monthly maximum penalty charges
	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	
1st Past due installment	\$1		.....	.....	.....	.....	\$1
2nd Past due installment	.....	\$1+\$2		.....	.....	.....	3
3rd Past due installment	.....	.....	\$3+\$2		.....	.....	5
4th Past due installment	.....	.....		\$5+\$2		.....	7
5th Past due installment	.....	.....	.....	.....	\$7+\$2		9
6th Past due installment	\$9+\$2	11
Cumulative maximum subtotals	1	4	9	16	25	36
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Bimonthly repayment schedule	Installment due dates--Missed payments			Separate bimonthly maximum penalty charges			
	Jan. 2	Mar. 2	May 2				
1st Past due installment	\$3	.....	.....	\$3			
2nd Past due installment	.....	\$3+\$3	.....	6			
3rd Past due installment	.....	.....	\$6+\$3	9			
Cumulative maximum subtotals	3	9	18	.....		
<hr/>							
Quarterly repayment schedule	Installment due dates--Missed payments		Separate quarterly maximum penalty charges				
	Jan. 2	Apr. 2					
1st Past due installment	\$6	.....	\$6				
2nd Past due installment	.....	\$6+\$6	12				
Cumulative maximum subtotals	6	18	.....			